IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

CHURCH OF SCIENTOLOGY, INTERNATIONAL,
Plaintiff/Respondent,

vs.

GERALD ARMSTRONG,
Defendant/Appellant.

NO. A075027

CLERK'S TRANSCRIPT ON APPEAL

FROM A JUDGMENT MADE AND ENTERED

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

MARIN COUNTY COURTS

VOLUME 7

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

MARIN COUNTY COURTS

DEPARTMENT 1

CHURCH OF SCIENTOLOGY, INTERNATIONAL, **Plaintiff,** **vs.** **GERALD ARMSTRONG,** **Defendant.**	**No. 157680**

GARY W. THOMAS	**JUDGE**
JOHN P. MONTGOMERY	**COURT EXECUTIVE OFFICER**
ELAINE PASSARIS	**REPORTER**

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VERIFIED SECOND AMENDED COMPLAINT FOR DAMAGES AND FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF FOR BREACH OF CONTRACT [INCLUDING EXHIBIT C] 4/5/94 1933

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY OF INTERNATIONAL, a California not-for-profit religious corporation;

Plaintiff,

vs.

GERALD ARMSTRONG and DOES 1 through 25, inclusive,

Defendants.

Case No. 152229

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION FOR BREACH OF CONTRACT

DATE: March 6, 1992
TIME: 10:30 a.m.
DEPT: 5

I. **PRELIMINARY STATEMENT**

In December, 1986, plaintiff Church of Scientology International ("the Church" or "plaintiff") sought to end a period of long and bitter harassment and attack from former-member Gerald Armstrong ("Armstrong" or "defendant"). Armstrong, who had been expelled from the Scientology religion after stealing confidential documents belonging to the religion's Founder, L. Ron Hubbard,

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entered into a campaign of activities, both overt and covert, intended to divide Church members from the ecclesiastical leaders of the Church, forge incriminating documents and plant them in Church files, stage a raid on Church facilities by government officials on the basis of the forged documents planted in Church files, get Church members to disaffect and file lawsuits against the Church on the basis of naked allegations insupportable by any evidence and, in Armstrong's own words, "to create as much s--- as possible" for the Church. See, Exhibit 3, Declaration of Lynn R. Farny in Support ("Farny Decl."), ¶7.

Armstrong's bitter and lengthy campaign was ended, or so plaintiff thought, when he entered into a confidential Settlement Agreement (the "Agreement") with plaintiff in 1986. The terms of the Agreement required Armstrong not merely to end his own litigation against plaintiff, but among other things, also required Armstrong to refrain from aiding others in litigation, to return to the Church the documents which he had stolen and all copies of them, to refrain from discussing with third parties his experiences with the Scientology faith, and to keep confidential all terms of the Agreement itself. This amicable settlement was achieved only after careful and extensive negotiations. See, Exhibit 4, Declaration of Lawrence E. Heller in Support ("Heller Decl."), ¶2.

Unfortunately, an amicable separation was not to be. Despite carefully drawn provisions of the Agreement, agreed to by both Armstrong and his attorney, Armstrong has brazenly embarked on a second zealous campaign of hatred aimed at the Church. Since June, 1991, Armstrong has, by his own admissions:

- Provided aid to anti-Church litigants Vicki and Richard Aznaran[1] and Joseph Yanny[2] by giving them declarations which purport to describe Armstrong's experiences with Scientology, and which attach copies of documents that Armstrong agreed to keep confidential, including copies of the Agreement;

- Performed paralegal services for Yanny in the Aznarans' case; and

- Performed paralegal services in the Aznarans' case for the Aznarans' present attorney, Ford Greene, which continues to the present.

Rather than deny these activities, all of which violate the Agreement and end the peace for which the Church bargained and paid, Armstrong boasts of them.[3]

In order to end Armstrong's unlawful campaign once and for all, the Church has filed this action and this motion, seeking to enjoin Armstrong from committing further and continuous breaches of his Agreement while the effects of his earlier breaches are being litigated. The Church requests a preliminary injunction requiring Armstrong, a Marin County resident, to end his misconduct, or face contempt of court.[4]

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[1] Vicki Aznaran is the former president of another entity affiliated with the Scientology faith, Religious Technology Center. She and her husband Richard, a former employee of the plaintiff Church, are involved in litigation against plaintiff and other Church parties, Vicki Aznaran, et al. v. Church of Scientology of California, et al., United States District Court for the Central District of California, No. CV 88-1786 JMI (Ex).

[2] Joseph Yanny is the former attorney for the Church and is also a defendant in a pending action, Religious Technology Center, Church of Scientology International and Church of Scientology of California v. Joseph A. Yanny ("Yanny 2"), LASC No. BC-033035, in which he has been enjoined from legal representation of Armstrong against his former clients.

[3] The Church's pleas and requests that he honor his Agreement have proven fruitless; rather, Armstrong, having spent the proceeds of his earlier hate campaign, seems bent on extorting still more money from this plaintiff with his outrageous conduct. On a daily and continuous basis, Armstrong is working to poison proceedings involving current anti-Church litigants, impeding any hope of resolving those cases short of a lengthy and expensive trial.

II. STATEMENT OF FACTS

A. The Settlement Agreement

In December, 1986, the Church entered into the Agreement with Armstrong. The Agreement provided for a mutual release and waiver of all claims arising out of a cross-complaint which defendant Armstrong had filed in the case of Church of Scientology of California v. Gerald Armstrong, Los Angeles Superior Court No. C 420153.[5] The Agreement included multiple clauses designed to guarantee that new actions were not spawned or encouraged by the conclusion of the old one.[6] These clauses included provisions that Armstrong would not: (1) assist or advise anyone else engaged in litigation adverse to the interests of the Church; (2) testify or otherwise participate in any other judicial proceeding adverse to the Church unless compelled to do so by lawful subpoena; (3) disclose documents at issue in the case; or (4) disclose to anyone the terms of the Agreement itself.[7]

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[4] See, e.g., Exhibits 1F, 1J and 1K to Request for Judicial Notice ("Request") and Exhibit 2B to Declaration of Andrew H. Wilson in Support ("Wilson Decl.").

[5] The signatories to the Agreement were Gerald Armstrong and the Church of Scientology International, by its President, Heber Jentzsch. [to Wilson Decl.] Mr. Armstrong's signature was witnessed by Jo Ann Richardson and Michael Sutter, and the Agreement was signed with approval as to form and content by Mr. Armstrong's attorney, Michael Flynn. [Id.]

[6] See specifically ¶¶ 7(H), 7(G), 10, 7(D), 18(D), 20 of Exhibit 2A to Wilson Decl.

The Church had good reason for negotiating these particular clauses with Armstrong. In addition to his own litigation, Armstrong fomented significant additional litigation against the Church and other Churches of Scientology, stirring up enmities with other former members. Moreover, Armstrong became involved in plot after clandestine plot to take over or even destroy his former religion.

In November, 1984, for example, Armstrong was plotting against the Scientology Churches and seeking out staff members in the Church who would be willing to assist him in overthrowing Church leadership. The Church obtained information about Armstrong's plans and, through a police-sanctioned investigation, provided Armstrong with the "defectors" he sought. On four separate occasions in November, 1984, Armstrong met with two individuals that he considered to be defectors, whom he knew as "Joey" and "Mike." In reality, both "Joey" and "Mike" were loyal Church members who, with permission from the Los Angeles police, agreed to have their conversations with Armstrong surreptitiously videotaped. During the course of these conversations, Armstrong:

a. Demanded that "Joey" provide him with copies of documents published by the Church so that he could forge documents in the same style. Armstrong wanted "Joey" to then plant these Armstrong creations in the Church's files so that Armstrong could tip off the Criminal

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[7] Armstrong also agreed that damages for violations of the nondisclosure provisions would be a liquidated amount of $50,000 per disclosure.

Investigations Division of the Internal Revenue Service ("CID"), and the incriminating documents would be found in a resulting raid;

b. Sought to "set up" the defection of a senior Scientologist by finding a woman to seduce him;

c. Told "Joey" all about his conversations with Al Lipkin, an investigator for the CID, and attempted to get "Joey" to call Lipkin and give him false information that would implicate the Church's leaders in the misuse of donations; and

d. Instructed "Mike" on the methods of creating a lawsuit against the Church leadership based on nothing at all:

> ARMSTRONG: They can allege it. They can allege it. They don't even have -- they can allege it.
>
> RINDER: So they don't even have to have the document sitting in front of them and then --
>
> ARMSTRONG: F___ing say the organization destroys the documents.
>
> * * *
>
> Where are the -- we don't have to prove a goddamn thing. We don't have to prove s___t; we just have to allege it.

(Exhibit 3, Farny Decl., ¶¶4 and 5.)

Armstrong received a portion of a total settlement paid to his attorney, Michael Flynn, in block settlement concerning all of Mr. Flynn's clients who were in litigation with any Church of Scientology or related entity. The exact portion of the settlement which Armstrong received was maintained as confidential between Mr. Flynn and Armstrong.

B. Armstrong Has Violated the Settlement Agreement

1. Armstrong Violated The Agreement By Providing Aid To Anti-Church Litigants Vicki And Richard Aznaran Through His Employment By Joseph A. Yanny As A Paralegal

Vicki and Richard Aznaran ("the Aznarans"), are former Church members who are currently engaged in litigation against, inter alia, RTC and CSI. In June, 1991, the Aznarans discharged their attorney, Ford Greene, and retained Joseph A. Yanny to represent them. [Exs. 1A, 1B, 1C, 1D to Request, Substitutions of Attorney.][8] During his time as the Aznarans' counsel, Yanny hired Gerald Armstrong, in Yanny's own words "as a paralegal to help [Yanny] on the Aznaran case." [Ex. 1E to Request, Transcript of Proceedings in Religious Technology Center et al. v. Joseph A. Yanny, et al., LASC No. BC 033035 ("RTC v. Yanny"), p. 25.] In a holographic declaration supplied by Armstrong to Yanny, Armstrong admitted that Yanny called him on July 10, 1991, and asked for Armstrong's help in Yanny's proposed representation of the Aznarans. [Ex. 1F to Request, Declaration of Gerald Armstrong of July 19, 1991, para. 2]; that Armstrong agreed to help Yanny with the Aznarans' case, and that he would travel to Los Angeles for that express purpose on July 12, 1991 [Id., para. 3]; and that Armstrong asked Yanny to pay him $500 for his services. [Id., para. 3.] Armstrong admits that he did travel to Los Angeles, did stay with Yanny on July 15 and 16, and wrote a declaration for

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[8] Yanny is former counsel to the Church Parties and his substitution into the case was later vacated by the Court sua sponte, the Court noting that Yanny's retention as the Aznarans' counsel was "highly prejudicial" to CSI. [Ex. 10 to Request, Order of July 24, 1991.]

Yanny and the Aznarans. [Id., para. 4.] In a declaration dated July 31, 1991, as well as in open Court, Yanny admitted that he has hired Armstrong to act for him as a paralegal in litigation against the Church and other related entities. [Ex. 1G to Request, Declaration of Joseph A. Yanny, July 31, 1991, para. 4, and Ex. 1E to Request, supra.]

Armstrong's acceptance of this employment from Yanny to work on the Aznarans' litigation is in direct violation of Paragraphs 10 and 7(G) of the Agreement; see Exhibit 2A to Wilson Decl.. These paragraphs prohibit Armstrong from providing aid or advice to anyone engaged in or contemplating litigation which is adverse to the Church. [Ex. 2A, paras. 7(G), 10.] The Aznarans are directly engaged in litigation with RTC and CSI, and Armstrong has provided direct assistance to them by acting as Yanny's paralegal on their case. There could not be a more clear example of conduct which violates the letter and intent of the Agreement.

2. **Armstrong Also Violated the Agreement by Aiding Yanny in Litigation Against the Church**

After Yanny entered his appearance in the Aznarans' case, and indicated to Church counsel that he represented Gerald Armstrong as well, the Church and two related entities brought suit against Yanny in Los Angeles Superior Court, in the case of RTC v. Yanny, supra. In that action, the Church sought and obtained a Temporary Restraining Order and a Preliminary Injunction against Yanny [Ex. 1H and 1I to Request], which prohibit Yanny from aiding, advising, or representing, directly or indirectly, the Aznarans or Armstrong, on any matters relating to the Church. At the hearings before the Court on the TRO and on the injunction, Yanny filed two declarations prepared and executed by Gerald Armstrong on July 16, 1991. [Exs. 1J and 1K to Request.] Armstrong also asserts knowledge concerning settlements, including his own, which he purportedly gleaned by working as a paralegal for yet another law firm, Flynn, Joyce and Sheridan [Ex. 1J to Request, paras. 2-5]. The declarations were offered by Yanny as part of Yanny's defense, which was ultimately rejected by the Court when it issued its injunction. [Ex. 1E to Request at 31-34.]

Just as in the Aznarans' case, this aid provided by Armstrong to Yanny, a litigant against the Church, was a direct violation of paragraphs 10 and 7(G) of the Agreement. Moreover, Armstrong attached as an exhibit to one of the declarations, Ex. 1J to Request, a copy of the Agreement, the terms of which he had agreed to keep confidential. [Ex. 2A to Wilson Decl., para. 18(d).] This disclosure of the terms of the Agreement is a direct violation of the non-disclosure agreement.

3. **Armstrong Violated the Agreement by Helping Ford Greene With the Aznaran Case**

Armstrong is brazenly, openly and continually assisting adverse litigants and bragging about it to the Church's counsel and staff. After Yanny's substitution into the Aznarans' case was summarily vacated, Ford Greene was reinstated as the Aznarans' counsel of record. In a letter to the Church's counsel dated August 21, 1991, Armstrong admitted that he had been working at Greene's office with Greene on the Aznarans' case, helping him to prepare responses to summary judgment motions filed in that case. [Ex. 2B to Wilson Decl., p. 2.] Both Armstrong and Greene have freely admitted in sworn declarations that Greene has and is continuing to employ Armstrong as a paralegal in the Aznaran case. Armstrong himself describes these activities as follows:

> My help to Ford Greene in all of the papers recently filed has been in proofreading, copying, collating, hole-punching, stapling, stamping, packaging, labeling, air freighting, and mailing. Mr. Greene and I have had several conversations during this period, some of which certainly concerned the litigation.

[Ex. 1L to Request, Declaration of Gerald Armstrong (minus exhibits) at para. 18.] See also, Ex. 1M to Request, Declaration of Ford Greene, para. 7. Indeed, Armstrong's presence in Greene's offices has been continuous throughout December, 1991, and shows no sign of cessation. [Exhibit 5, Declaration of Laurie J. Bartilson in Support.] [9]

On October 3, 1991, the Church filed a motion in Los Angeles Superior Court for enforcement of the Settlement Agreement and for liquidated damages due to Armstrong's breaches of the Agreement. In Armstrong's papers and at the hearing of the matter, Armstrong did not deny that he has committed the multiple breaches which provoked the filing of the motion, and he did not deny that his activities violated the specific provisions of the Settlement Agreement cited in the moving papers. [10] Instead, Armstrong raised with the Court the tired refrain that he had been under "duress" when he executed the Agreement. Armstrong repeatedly raised this pretense and his alleged "fear" of the Church before Judge Breckenridge, the trial judge in the earlier, settled matter. It is, however, thoroughly belied by the approval of the Agreement by both the Court and Armstrong's attorney. Moreover, the credibility of this refrain is shattered by Armstrong's own words, uttered months after obtaining a defense judgment in the original Armstrong action based on his spurious claim of being under "duress" due to his "fear" of the Church. In the November, 1984 videotaped conversations with Joey referred to above, the following exchange took place while Armstrong was discussing his plans for destroying the Church:

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[9] In addition to the paralegal services Armstrong claims he provided the Aznarans, Armstrong also provided the Aznarans with a declaration, dated August 26, 1991, and filed in that case. [Ex. 1N to Request.] Armstrong's declaration describes some of his experiences with and concerning the Church, in direct violation of paragraphs 7(H), 7(G), and 10 of the Agreement, and purports to authenticate copies of documents whose contents he agreed, in paragraph 10 of the Agreement, never to reveal. [Id., Exhibits 1 and 2.]

[10] Indeed, Armstrong's response to the motion was in part to boast that not only had he committed the violations in question, he had never intended to abide by the Agreement at all. In a declaration dated November 17, 1991, Armstrong asserts that he (continued...)

> JOEY: Well, you're not hiding!
>
> ARMSTRONG: Huh?
>
> JOEY: You're not hiding.
>
> ARMSTRONG: F--- no! And. . .
>
> JOEY: You're not afraid, are you?
>
> ARMSTRONG: No! And that's why I'm in a f--king stronger position than they are!

---

[10] (...continued) read all of the clauses at issue here and understood their import at the time he signed the Agreement, but objected to them to his own lawyers and told his lawyers he never intended to follow them. [Ex. 1P, Declaration of Gerald Armstrong, paras. 12-14.] Armstrong asserts that he "put on a happy face" and went through the charade of signing the Agreement anyway, so that he could have from the settlement the "financial wherewithal" to "get on with next phase of [his] life." [Id., para. 17.] Naturally, Armstrong never expressed to the Church or its lawyers that he had no intention of honoring his Agreement when he signed the papers. If he had, the Church would never have agreed to pay him anything.

JOEY: How's that?

ARMSTRONG: Why, I'll bring them to their knees!

Exhibit 3, Farny Decl., para. 6. If anything, Armstrong has become bolder as time has passed.

The Church's showing in support of the motion to enforce the Settlement Agreement consisted of uncontroverted evidence that Armstrong had violated paragraphs 10 and 7(G) of the Settlement Agreement by:

1) Providing aid to Richard and Vicki Aznaran ("Aznarans") in their lawsuit against the plaintiff herein, via employment as a paralegal by Joseph Yanny working on that case;

2) Aiding Yanny in litigation against counter-defendants by voluntarily filing declarations in his support; and

3) Helping Ford Greene, the Aznarans' current lawyer, as a paralegal on the Aznaran case, and by voluntarily providing declarations for filing by Greene in the case.

Not one word of Armstrong's opposition was devoted to challenging those proven accusations. In addition, the Court, with the Honorable Bruce R. Geernhart presiding, did not decide the case on the merits but rather found it was without jurisdiction to decide the merits of the case.

As demonstrated below, Armstrong has continuously violated each of the provisions of the Agreement listed above in Footnote 6. While the Church has no interest in pursuing a multiplicity of suits, Armstrong's own conduct demonstrates not an isolated incident, but an ongoing campaign, no different from his earlier campaign of hatred and harassment. Therefore, the Church seeks a preliminary injunction pending trial of this matter. The irreparable injury to plaintiff and the inadequacy of any other remedy mandates that the Court grant the Order requested.

III. ARGUMENT

A. An Injunction May Be Granted To Prevent The Breach Of A Contract The Performance Of Which Would Be Specifically Enforced

C.C.P. § 526 empowers the court to grant an injunction to prevent a breach of a contract if the contract is one which may be specifically enforced. C.C.P. § 526; see also, Steinmeyer v. Warner Consolidated Corp. (1974) 42 Cal.App.3d 515, 518, 116 Cal.Rptr. 57, 60 ("An injunction cannot be granted to prevent breach of a contract which is not specifically enforceable."); Southern Christian Leadership Conference of Greater Los Angeles v. Al Malaikah Auditorium Co. (1991) 230 Cal.App.3d 207, 281 Cal.Rptr. 216. The Agreement at issue is one which may be specifically enforced by this Court as the contract is sufficiently definite and certain in its terms, it is just and reasonable, the plaintiff has performed its side of the bargain, Armstrong has breached the contract, the Agreement was supported by adequate consideration, and the Church's remedy at law is inadequate. Taramind Lithography Workshop, Inc. v. Sanders (1983) 143 Cal.App.3d. 571, 575, 193 Cal.Rptr. 409, 410.

Further, while the Agreement contains a liquidated damages provision, it is a well-settled statutory principle that a contract providing for liquidated damages does not prevent the contract from being specifically enforceable. Civil Code § 3389. Accordingly, the Court is empowered to grant a preliminary injunction to enjoin Armstrong from further breaching his Agreement.

B. Preservation of The Status Quo And Prevention of Irreparable Injury Requires The Court to Grant Plaintiff's Application

While C.C.P. § 526(5) deters the granting of injunctions to prevent the breach of a contract "the performance of which would not be specifically enforced," the Settlement Agreement at issue herein is patently specifically enforceable. Indeed, the former Mother Church of the Scientology religion, the Church of Scientology of California ("CSC"), has already successfully obtained injunctions and specific performance of settlement agreements containing similar provisions.

In Wakefield v. Church of Scientology of California (11th Cir. 1991) ___ F.2d __ (Slip Op., Exhibit 1R to Request), CSC sought successfully to specifically enforce a settlement agreement containing terms substantially similar to those which Armstrong has violated here. CSC moved to enforce the provisions of the settlement agreement, and the district court ordered hearings before the magistrate judge. Id. The magistrate judge concluded that Wakefield had violated the agreement. The district court adopted the magistrate judge's findings, and issued a preliminary and permanent injunction prohibiting Wakefield from violating the agreement. Id. When Wakefield violated the injunction, again making media appearances, CSC sought an order to show cause why Wakefield should not be held in contempt. At an in camera proceeding, the magistrate judge found that Wakefield had willfully violated the injunction, and recommended that the case be referred to the United States Attorney's office for criminal contempt proceedings. Id. at 4628.

Although the district court's issuance of the injunction in

Wakefield was not at issue in the Eleventh Circuit proceedings, the Eleventh Circuit described in its opinion, "Wakefield's constant disregard and misuse of the judicial process," suggesting approval of the district court's actions. Id. at 4630.

Similarly, in McLean v. Church of Scientology of California (11th Cir. 1991) __ F.2d __ No. 89-3505 [Ex. 1P], plaintiff McLean also entered into a settlement agreement containing confidentiality provisions preventing her from discussing the litigation with anyone outside her immediate family. Id. at 2. By her own testimony, plaintiff admitted to reacquiring certain documents and using them to "counsel" Church members. She further admitted to discussing certain aspects of the suit with people outside her immediate family. Id. at 3. As a result, the appellate court affirmed the district court order permanently enjoining McLean from disclosing any information about her lawsuit and the resulting settlement agreement entered into between the parties. Id. at 6.

Just as the district courts in Wakefield and McLean found it necessary to issue an injunction to enforce the agreement of the parties, so must the Court herein issue a preliminary injunction to enjoin Armstrong from further breaches. The status quo will be maintained and irreparable injury will be prevented only by granting the Church's motion for preliminary injunction and by halting the activities of Armstrong.

1. **The Status Quo Will Be Maintained Only By Granting Plaintiff's Motion**

The status quo sought to be maintained by the Church is the achievement by both sides of the benefits of the Agreement -- the status quo which existed when, in December 1986, the Church and Armstrong were fully performing their obligations under the Agreement. By repeatedly violating the Agreement, Armstrong has destroyed the peace for which the Church lawfully bargained. Therefore, the Church seeks an order that prevents Armstrong from further harming the Church and related entities, and his continuing breach of the Settlement Agreement. Absent the order the Church seeks, the damage and corruption caused by Armstrong's outright and continuing breach of the Agreement will spread even further than it already has.

The fact that Armstrong intends to continue his transgressions and damage the Church could not be any plainer. Indeed, Armstrong has already made it overwhelmingly clear that he has deliberately breached the Agreement by his own actions in aiding Yanny and Ford Greene in litigation adverse to the Church and in his own statements made in his declarations filed in the Aznaran case. [Ex. 1L to Request, Declaration of Gerald Armstrong (minus exhibits) at para. 18.] [See also, Ex. 1M to Request, Declaration of Ford Greene, para. 7.] Therefore, the Church requests that the Court compel Armstrong to cease assisting parties with interests adverse to the Church and to abide by the terms of the Agreement.

2. **The Church Will Be Irreparably Harmed Absent the Issuance of an Injunction**

Despite repeated demands by the Church that he conduct himself in accordance with all of the provisions of the Agreement, Armstrong has continued to violate those provisions which were specifically requested by the Church to ensure that peace was truly and finally obtained by the settlement. Not only is Armstrong assisting adversaries of the Church, he is doing so to foster and perpetuate relentless litigation against the Church to serve his own ends. Armstrong's conduct is continuous, oppressive and malicious and has been undertaken for the express purpose of injuring plaintiff. Only an injunction pending trial has any hope of stopping Armstrong from waging his malicious, relentless and senseless war.

C.C.P. § 526 provides that an injunction can be granted when it appears by complaint or affidavit that the commission of some act during the continuance of the action would produce great or irreparable injury to a party to the action (subdivision 2) or when it appears that a party to the action is doing, or threatening to do, some act in violation of the rights of another respecting the subject of the action and tending to render the judgment ineffectual (subdivision 3). Here, an injunction is needed to prevent Armstrong from continuously breaching the Agreement and fomenting litigation against the Church while the Church awaits trial and judgment on the merits. Although some of Armstrong's breaches are subject to a liquidated damages clause, others, including the continual violations which he is engaging in through his employment by Ford Greene, are not. It is these continual violations, which no monetary award can remedy, which the Church seeks to enjoin.[11]

---

[11] No remedy may be available to the Churches in the form of liquidated damages in any case. Armstrong has asserted by declaration that he is insolvent, saying,

"I have attempted to obtain an attorney to represent me (continued...)

C. A Balancing Of The Equities Requires The Court To Grant Plaintiff's Motion

In determining whether to grant injunctive relief, the Court must balance the equities before it and exercise its discretion in favor of the party most likely to be injured. Robbins v. Superior Court (1985) 38 Cal.3d 199, 205, 211 Cal.Rptr. 398, 402. In balancing the equities, the Court considers two interrelated factors: (1) the likelihood that plaintiff will prevail on the merits; and (2) the interim harm that plaintiff is likely to suffer if the injunction is denied as compared to the harm that defendants are likely to suffer if the injunction is granted. Id., at 206.

1. Plaintiff Is Likely To Prevail On The Merits

It is clear that the Church is likely to succeed on the merits. The Church has submitted an overwhelming factual showing, which provides thorough detail of Armstrong's willful injurious conduct and overt violations of the Agreement. The Verified Complaint and the Declarations of Lawrence E. Heller, Exhibit 4, and Laurie J. Bartilson, Exhibit 5, supply only a portion of the facts for the Church's likelihood of success on the merits. In addition, Armstrong's own statements, made in declarations filed

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[11] (...continued)

> specifically in the motion to enforce now before the court, but have so far been unsuccessful. I do not have the wherewithal to retain any attorney who would require a fee to defend me." [Ex. 1Q to Request]

Armstrong's asserted insolvency made the guarantee of liquidated damages an empty promise, and renders the Churches' damage, even for these breaches, irremediable. West Coast Construction Company v. Oceano Sanitary District (1971) 17 Cal.App.3d 693, 95 Cal.Rptr. 169.

in the Aznaran case as well as his own conduct, form the best evidence that he has breached and will continue to breach the Agreement, until this Court enjoins his violative conduct.

In addition, on December 3, 1991, the Church filed a motion in Los Angeles Superior Court for enforcement of the Settlement Agreement and for liquidated damages due to Armstrong's breaches of the Agreement. In Armstrong's opposing papers and at the hearing of the matter, Armstrong did not deny that he has committed the multiple breaches which provoked the filing of the motion, and he did not deny that his activities violated the specific provisions of the Settlement Agreement cited in the moving papers. Indeed, the motion failed only because the Court determined that it lacked jurisdiction, since the case itself had already been settled. With a new action now before the Court, an injunction should and must issue to preserve the Church's rights pending trial.

2. **The Interim Harm That Plaintiff Will Suffer Absent An Injunction Exceeds Any Harm to Armstrong If Injunctive Relief Is Granted**

Armstrong has no equities whatsoever in this action. No one has any right to continue to violate a settlement agreement. Armstrong's only "injury" if he is enjoined is that he will not be able to violate the Agreement in the future. On the other hand, the harm that will be suffered by the Church absent injunctive relief is the irreparable harm of being victimized by Armstrong's violations, while others with interests adverse to the Church benefit in legal proceedings from an unfettered flow of breached obligations, wrongful disclosures and legal infidelity.

Thus, the balancing of the equities unquestionably weighs in favor of the Church.

IV. CONCLUSION

In December, 1986, the Church bought an expensive peace from Armstrong. Its members thought, and reasonably, that the negotiated peace was desired by both sides, and permanent, its terms both clear and fair. Armstrong, his funds allegedly gone, has embarked on a campaign of deliberate breaches reminiscent of the very conduct plaintiff sought to end, in an obvious effort to convince the Church that it must pay for its peace in five-year installments. Such an agreement was neither contemplated nor made. By providing aid, declarations, and information which he agreed to keep confidential directly to the Church litigation adversaries, Armstrong has repeatedly, deliberately and continuously breached the Agreement which he signed, and under the auspices of which he accepted a substantial settlement amount. Because Armstrong refuses to stop his continuous contempt for his own agreements, this Court must, on the uncontroverted evidence, much of it from Armstrong's own lips, enjoin him from further breaching his Agreement while this action is pending.

Dated: February 4, 1992.

Respectfully submitted,

WILSON, RYAN & CAMPILONGO

By:
Andrew H. Wilson

Laurie J. Bartilson
BOWLES & MOXON

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Los Angeles, California 90028.

On July 26, 1993, I served the foregoing document described as EX PARTE APPLICATION FOR ORDER TO SHOW CAUSE WHY GERALD ARMSTRONG SHOULD NOT BE HELD IN CONTEMPT OF COURT; MEMORANDUM OF POINTS AND AUTHORITIES on interested parties in this action,

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed as follows:

FORD GREENE
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

[X] BY MAIL

[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on July 26, 1993 at Los Angeles, California.

[ ] **(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressees.

Executed on ________________, at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Jerry Hanlon
Print or Type Name

Jerry Hanlon
Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, California 90028.

On July 26, 1993, I served the foregoing document described as EX PARTE APPLICATION FOR ORDER TO SHOW CAUSE WHY GERALD ARMSTRONG SHOULD NOT BE HELD IN CONTEMPT OF COURT; MEMORANDUM OF POINTS AND AUTHORITIES on interested parties in this action.

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed as follows:

PAUL MORANTZ
P.O. Box 511
Pacific Palisades, CA 90272

[ ] BY MAIL

[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[ ] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

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Print or Type Name

Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

1740

HUB LAW OFFICES
Ford Greene, Esquire
California State Bar No. 107601
711 Sir Francis Drake Boulevard
San Anselmo, California 94960-1949
Telephone: (415) 258-0360

PAUL MORANTZ, ESQ.
P.O. Box 545
Pacific Palisades, CA 90272
(310) 459-4745

Attorney for Defendant
GERALD ARMSTRONG

FILED
LOS ANGELES SUPERIOR COURT
JUL 26 1993
JAMES H. DEMPSEY, CLERK
BY INNA R. MATTHEWS, DEPUTY

FILED
NOV 16 1994
HOWARD HANSON
MARIN COUNTY CLERK
BY DEP

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

157680

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation; Plaintiffs, vs. GERALD ARMSTRONG; DOES 1 through 25, inclusive, Defendants.	No. **BC 052395** **DECLARATION OF FORD GREENE IN OPPOSITION TO APPLICATION FOR AN ORDER TO SHOW CAUSE RE CONTEMPT; REQUEST FOR MONETARY SANCTIONS** Date: July 26, 1993 Time: 8:30 a.m. Dept: 86 Trial Date: Stayed Discovery Cut Off: Stayed Motion Cut Off: Stayed

FORD GREENE declares:

1. I am an attorney licensed to practice law in the Courts of the State of California and am the attorney of record for Gerald Armstrong, defendant herein.

2. Attached hereto and incorporated herein by reference as though fully set forth is Exhibit A, a true and correct copy of a

letter dated July 23, 1993, from Laurie J. Bartilson to Ford Greene.

3. Attached hereto and incorporated herein by reference as though fully set forth is Exhibit B, a true and correct copy of the preliminary injunction issued in this case by the Honorable M. Sohigian on May 28, 1992.

4. Attached hereto and incorporated herein by reference as though fully set forth is Exhibit C, a true and correct copy of the Complaint to Set Aside Judgment and for Equitable Relief in Church of Scientology of California v. Larry Wollersheim, LASC No. BC 074815 ("Wollersheim II").

5. Attached hereto and incorporated herein by reference as though fully set forth is Exhibit D, a true and correct copy of the Amended Memorandum of Points and Authorities in Support of Defendant's Special Motion to Strike filed June 21, 1993, in Wollersheim II.

6. Attached hereto and incorporated herein by reference as though fully set forth is Exhibit E, a true and correct copy of Declaration of Gerald Armstrong dated June 4, 1993, filed as Exhibit 6 in support of the Amended Memorandum of Points and Authorities in Support of Defendant's Special Motion to Strike filed June 21, 1993, in Wollersheim II.

7. Attached hereto and incorporated herein by reference as though fully set forth is Exhibit F, a true and correct copy of a letter dated July 23, 1993, from Ford Greene to Laurie J. Bartilson.

8. Attached hereto and incorporated herein by reference as though fully set forth is Exhibit G, a true and correct copy of a

letter dated July 23, 1993, from Gerald Armstrong on behalf of Ford Greene to Laurie J. Bartilson.

9. Attached hereto and incorporated herein by reference as though fully set forth is Exhibit H, a true and correct copy of a letter dated July 23, 1993, from Laurie J. Bartilson to Ford Greene.

10. On Sunday, July 25, 1993, I served by fax a copy of Defendant Armstrong's Memorandum In Opposition To Application For An Order To Show Cause Re Contempt; Request For Monetary Sanctions to Laurie J. Bartilson, counsel for plaintiff.

11. In cult-related litigation, such as that at bar, I bill my time at the rate of $200.00 per hour. It has taken me four hours to draft the memorandum and declaration that are to be submitted in opposition to Scientology's Application for an Order to Show Cause Why Gerald Armstrong Should Not Be Held In Contempt. I value the time of my paralegal at $55.00 per hour. In order for this opposition to presented to the Court, I directed my paralegal to travel to Los Angeles so that said papers could presented in a timely fashion. Three paralegal hours were expended on pulling, copying and assembling documents. 427 copies were made at the cost of $.25 per copy and 29 fax sheets at $2.00 per sheet. Therefore, the total fees and costs incurred in opposing the application are $1,569.75.

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///

Under penalty of perjury pursuant to the laws of the State of California I hereby declare that the foregoing is true and correct according to my first-hand knowledge, except those matters stated to be on information and belief, and as to those matters, I believe them to be true.

Executed on July 25, 1993, at San Anselmo, California

FORD GREENE

1744

BOWLES & MOXON
ATTORNEYS AT LAW
6255 SUNSET BOULEVARD
SUITE 2000
HOLLYWOOD, CALIFORNIA 90028

(213) 953-3360
TELECOPIER (213) 953-3351

TIMOTHY BOWLES *
KENDRICK L. MOXON ±
LAURIE J. BARTILSON †
HELENA K. KOBRIN ‡

* ALSO ADMITTED IN OREGON
± ALSO ADMITTED IN THE DISTRICT OF COLUMBIA
† ALSO ADMITTED IN MASSACHUSETTS
‡ ALSO ADMITTED IN FLORIDA
§ ALSO ADMITTED IN ILLINOIS
# ALSO ADMITTED IN OKLAHOMA

PETER M. JACOBS
RANDALL A. SPENCER §
ROBERT A. WIENER #
LESLIE T.W. SOASH
AVA MARIE SANDLIN

OF COUNSEL
JEANNE M. GAVIGAN
MARCELLO M. DI MAURO
KAREN L. BROWN
KAREN D. HOLLY

July 23, 1993

BY TELEFAX AND U.S. MAIL

RECEIVED
JUL 23 1993
HUB LAW OFFICES

Ford Greene
711 Sir Francis Drake Blvd.
San Anselmo, California 94960-1949

Re: Church of Scientology International v. Gerald Armstrong

Dear Mr. Greene:

Please take notice that on Monday, July 26, 1993, at 8:30 a.m., plaintiff Church of Scientology International will appear in Department 86 of the Los Angeles Superior Court, and request that an order issue, pursuant to Code of Civil Procedure Section 1212, directing Gerald Armstrong to show cause why he should not be held in contempt of court and sanctioned. Plaintiff intends to base its request on the declaration, dated June 4, 1993, which Armstrong provided to Larry Wollersheim and his attorneys in direct contravention of the injunction issued in this case by Judge Sohigian on May 28, 1992.

Sincerely,

BOWLES & MOXON

Laurie J. Bartilson

LJB:mfh

Enc.

cc: Paul Morantz **BY TELEFAX AND U.S. MAIL**
cc: Andrew H. Wilson **BY TELEFAX AND U.S. MAIL**

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

:e: May 28, 1992
Honorable Ronald M. Sohigian, Judge
1

M. Cervantes, Deputy Clerk
None (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International
vs.
Gerald Armstrong, et al.

Counsel For Plaintiff

Counsel For Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

In this matter heretofore taken under submission on May 27, 1992, the court now makes the following ruling.

1 Plaintiff's legal remedies are inadequate insofar as the scope of relief ordered below is concerned, but not otherwise. CCP 526(4) and (5).

2 The threatened acts which are restrained by the order referred to below, but only those threatened acts, would do irreparable harm to plaintiff which could not be compensated by monetary damages. CCP 526(2).

3 On the basis of the instant record, there is a reasonable probability that plaintiff will prevail after trial of this case in the respects restrained by this order. CCP 526(1); cf., San Francisco Newspaper Printing Co., Inc. vs. Superior Court (Miller) (1985) 170 Cal. App. 3d 438.

4 Plaintiff is likely to suffer greater injury from denial of the preliminary injunction the terms of which are set out below than the injury which defendant is likely to suffer if it is granted. See Robbins vs. Superior Court (County of Sacramento) (1985) 38 Cal. 3d 199, 206.

5 The granting of a preliminary injunction in the terms set out below will preserve the status quo pending trial.

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: May 28, 1992
Honorable **Ronald M. Sohigian**, Judge
1a

M. Cervantes, Deputy Clerk
None (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International

vs.

Gerald Armstrong, et al.

Counsel For Plaintiff

Counsel For Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

6 Application for preliminary injunction is granted in part, in the following respects only.

Defendant Gerald Armstrong, his agents, and persons acting in concert or conspiracy with him (excluding attorneys at law who are not said defendant's agents or retained by him) are restrained and enjoined during the pendency of this suit pending further order of court from doing directly or indirectly any of the following:

> Voluntarily assisting any person (not a governmental organ or entity) intending to make, intending to press, intending to arbitrate, or intending to litigate a claim against the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986 regarding such claim or regarding pressing, arbitrating, or litigating it.
>
> Voluntarily assisting any person (not a governmental organ or entity) arbitrating or litigating a claim against the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986.

The court does not intend by the foregoing to prohibit defendant Armstrong from: (a) being reasonably available for the service of subpoenas on him; (b) accepting service of subpoenas on him without physical resistance, obstructive tactics, or flight; (c) testifying fully and fairly in response to properly put questions either in deposition, at trial, or in other legal or arbitration proceedings; (d) properly reporting or disclosing to authorities criminal conduct of the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986; or (e) engaging in gainful employment rendering clerical or paralegal services not contrary to the terms and conditions of this order.

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

e: May 28, 1992
Honorable Ronald M. Sohigian, Judge
1b

M. Cervantes, Deputy Clerk
None (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International
vs.
Gerald Armstrong, et al.

Counsel For Plaintiff

Counsel For Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

The application for preliminary injunction is otherwise denied.

7 The restraints referred to in sec. 6, above, will become effective upon plaintiff's posting an undertaking in the sum of $70,000 pursuant to CCP 529(a) by 12:00 noon on June 5, 1992.

8 The restraints referred to in sec. 6, above, properly balance and accommodate the policies inherent in: (a) the protectable interests of the parties to this suit; (b) the protectable interests of the public at large; (c) the goal of attaining full and impartial justice through legitimate and properly informed civil and criminal judicial proceedings and arbitrations; (d) the gravity of interest involved in what the record demonstrates defendant might communicate in derogation of the contractual language; and (e) the reasonable interpretation of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986. The fair interpretation of all the cases cited by the parties indicates that this is the correct decisional process. The law appropriately favors settlement agreements. Obviously, one limitation on freedom of contract is "public policy"; in determining what the scope of the public policy limitation on the parties' rights to enforcement of their agreement in the specific factual context of this case, the court has weighed the factors referred to in the first sentence of this section. Litigants have a substantial range of contractual freedom, even to the extent of agreeing not to assert or exercise rights which they might otherwise have. The instant record shows that plaintiff was substantially compensated as an aspect of the agreement, and does not persuasively support defendant's claim of duress or that the issues involved in this preliminary injunction proceeding were precluded by any prior decision.

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

e: May 28, 1992
Honorable **Ronald M. Sohigian**, Judge
1c

M. Cervantes, Deputy Clerk
None (E.R.M.)

BC 052395

(Parties and Counsel checked if present)

Church of Scientology, International

vs.

Gerald Armstrong, et al.

Counsel For Plaintiff

Counsel For Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

9 The court does not dispositively decide the underlying merits of the case except for this preliminary determination. CCP 526(1); Baypoint Mortgage Corp. vs. Crest Premium Real Estate etc. Trust (1985) 168 Cal. App. 3d 818, 823.

10 Plaintiff is ordered give written notice by mail by June 5, 1992, including in that written notice a statement regarding whether plaintiff has or has not posted the undertaking referred to in sec. 7, above, and attaching to that written notice evidence showing that the undertaking has been posted if that is the fact.

DATED: May 28, 1992.

RONALD M. SOHIGIAN

RONALD M. SOHIGIAN
Judge of the Superior Court

A copy of this minute order is sent to counsel via United States mail this date.

Kendrick L. Moxon
BOWLES & MOXON
6255 Sunset Blvd.
Suite 2000
Hollywood, CA 90028-7421
(213) 661-4030

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY OF CALIFORNIA

J. KAKITA?

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

FILED 2/16/93

CHURCH OF SCIENTOLOGY OF CALIFORNIA, a California non-profit religious corporation,

Plaintiff,

vs.

LARRY WOLLERSHEIM,

Defendant.

CASE NO. BC 074875

COMPLAINT TO SET ASIDE JUDGMENT AND FOR EQUITABLE RELIEF

Plaintiff Church of Scientology of California ("the Church") alleges as follows:

GENERAL ALLEGATIONS

1. This is an action for equitable relief from a judgment rendered in this Court on July 22, 1986, in an action entitled Larry Wollersheim v. Church of Scientology of California, Case No. C 332 027 (the "Prior Action"). A true and correct copy of that judgment is annexed as Exhibit A. The Prior Action resulted in the entry of a judgment against the Church for, inter alia, punitive damages which exceeded the Church's proven net worth by more than $14,000,000. Evidence newly discovered, as set forth in detail in paragraphs 9 - 20, infra, reveals that the verdict

was the result of passion and prejudice not merely of the jury, but of the sitting judge; that the judge was biased against the Church during the trial of the Prior Action because of beliefs that had no basis in fact, and came solely from extrajudicial sources; that the judge's prejudice became the source of the jurors' prejudice and bias; and that those prejudices were deliberately concealed from the Church and its counsel both during the trial proceedings and during post-trial proceedings in which the Church's attempts to inquire into the bias of judge and jury were uniformly thwarted. Because the trial court, due to his bias and prejudice, lacked jurisdiction over the trial of the Prior Action, the Church seeks equitable relief from the unjust judgment.

2. The Church is, and at all times herein mentioned was, a not for profit religious corporation organized and existing under the laws of the State of California with its principal offices at 1404 North Catalina, Los Angeles, California 90027.

3. Defendant Larry Wollersheim is an individual whose current residence is not known to the Church, but whose current mail drop, upon information and belief, is P.O. Box 10910, Aspen, Colorado 81612.

4. Jurisdiction and venue are proper in this Court because this is an action for equitable relief from a judgment entered in the Prior Action. That judgment was modified by the California Court of Appeal in an opinion reported at 212 Cal.App.3d 872, 260 Cal.Rptr. 331 (1989). The Court of Appeal's opinion was then vacated by the United States Supreme Court in a proceeding reported at 111 S.Ct. 1298 (1991). Judgment was again entered by

the California Court of Appeal on March 20, 1992, [Exhibit B] and modified by that Court on April 20, 1992 [Exhibit C]. On July 23, 1992, the California Supreme Court granted the Church's petition for review. The case is being held pending decision by the Supreme Court of the United States in TXO Production Corp. v. Alliance Resources Corp., et al., No. 92-479 and pending a determination by the Supreme Court of California in Gourley v. State Farm Mutual Automobile Ins. Co. (S014133) and MGW, Inc. v. Fredericks Development Corp. et al. (S015966).

FIRST CAUSE OF ACTION

FOR EQUITABLE RELIEF FROM JUDGMENT

(Against Defendant Wollersheim)

5. This action seeks an order from the Court declaring the judgment in the Prior Action null and void in its entirety. The judgment rendered in the Prior Action was, and at all times has been, and now is void because the trial court lacked jurisdiction to render judgment in the Prior Action.

6. The Church is informed and believes that the judge in the Prior Action, the Honorable Ronald Swearinger, was disqualified under California case law and applicable provisions of the California Code of Civil Procedure, including C.C.P. §§ 170.1 and 170.6. Newly-discovered evidence, as hereinafter alleged, discloses that the judge entertained -- but failed to disclose that he entertained -- unfavorable beliefs and a biased condition of mind toward the Church during the trial of the Prior Action. The unfavorable beliefs had no basis in fact or evidence, nor did they derive from anything other than extrajudicial sources. Because of these unfounded beliefs and

bias, Judge Swearinger was disqualified throughout the pendency of the Prior Action, and lacked jurisdiction to preside over the trial, or to enter judgment.

7. During post-trial proceedings following the Prior Action, interviews with jurors conducted by the Church's attorneys revealed that the jurors "believed" that they were being followed by members of the Church of Scientology. One of the jurors, Terri Reuter, stated that the jury had been told by "unnamed court personnel," whom she refused to identify, that during the trial Judge Swearinger's tires had been slashed, and that his dog had been found dead. She said that the jurors attributed these actions to unknown and unnamed members of the Church of Scientology. None of the jurors, however, would volunteer further information about these events. No members of any Church of Scientology had, in fact, followed the jurors, slashed any tires, or done anything at all to Judge Swearinger's dog. The Church was aware, however, that Wollersheim's counsel, Charles O'Reilly, had hired multiple private investigators during the course of the Prior Action, and Church counsel suspected that one or more of these investigators were responsible for "dirty tricks" designed to implicate the Church, and prejudice the jury.

8. After the juror interviews, Church attorneys sought to investigate the bias that obviously pervaded the jury and infected its verdict, seeking the source of these unfounded accusations, which had never been made in the open courtroom during the trial itself. Church counsel raised with the Court the jury bias which had been learned of in post-trial interviews, including the statements made by Reuter, and made a request to

Judge Swearinger to be allowed discovery into the jurors in order to establish the extent and source of the taint. Wollersheim's counsel vigorously opposed such an investigation and Judge Swearinger refused to allow the discovery. The source of the jury's bias thus remained a mystery for five years.

9. Finally, in an interview with William W. Horne, a reporter employed by the American Lawyer magazine which took place in 1992, Judge Swearinger revealed that he maintained a condition of mind of unfavorable bias against the Church during the trial of the Prior Action. According to Horne, Judge Swearinger stated that his dog had drowned in the family swimming pool during the trial of the Prior Action, and that the judge believed that he had been followed when in his car throughout the trial. The judge informed Horne that, while he was in possession of no evidence to corroborate the suspicions he harbored, he nonetheless felt that members of the Church of Scientology were responsible for such actions.

10. The judge's "suspicions" had no basis in fact. No member of any Church of Scientology did anything to harass or follow Judge Swearinger during the Prior Action, nor did any member of any Church of Scientology have anything to do with the death of Judge Swearinger's dog.

11. During an interview with the Church's attorneys Eric M. Lieberman and Jonathan Lubell on March 19, 1992, Horne revealed Judge Swearinger's statements as set forth in paragraph 9, supra. For the first time, the Church and its attorneys suspected that the source of infection of the jury was the judge himself.

12. Horne provided further details concerning Judge

Swearinger's statements in an interview with the Church's attorney, Michael L. Hertzberg, in New York City on March 23, 1992. Horne stated that Judge Swearinger related to Horne that the judge's veterinarian had told the judge that the dog was old and had died of a heart attack, yet Judge Swearinger still felt that the dog had fallen or been pushed into the pool. Horne further stated that the judge had said that he felt the Church somehow had responsibility for the dog's death.

13. Horne also told Hertzberg that Judge Swearinger claimed he had been followed "a few times" in his car during the trial of the Prior Action and had assumed that the Church of Scientology was responsible for these actions.

14. In the July/August 1992 issue of American Lawyer, Horne published an article which quotes Judge Swearinger as saying:

> "I was followed [at various times] throughout the trial . . . and during motions for a new trial . . . . All kinds of things were done to intimidate me, and there were a number of unusual occurrences during that trial. My car tires were slashed. My collie drowned in my pool. But there was nothing overtly threatening, and I didn't pay any attention to the funny stuff."

15. During the pendency of the Prior Action, Judge Swearinger never mentioned these incidents to counsel for the Church nor revealed (to them) his concern or belief that Church personnel were responsible for acts of harassment against him. By withholding any mention of his concern, Judge Swearinger denied the Church the opportunity to remove his concerns or to

challenge him for cause.

16. The Church is informed, and therefore believes, that although Judge Swearinger did not divulge his state of mind to Church counsel, he did describe these incidents to court personnel during the trial of the Prior Action, and that court personnel, in turn, revealed them to the jurors, resulting in a jury as biased as the judge.

17. In April, 1992, during a chambers conference in a case unrelated to the Prior Action and to which neither Wollersheim nor the Church was a party, Judge Swearinger discussed the trial of the Prior Action with counsel in that case, one of whom was counsel for Wollersheim in the most recent Court of Appeal proceeding in the Prior Action. The Church is informed, and therefore believes, that Judge Swearinger stated to Wollersheim's appellate lawyer that he believed the award of damages in the Prior Action was excessive but that he had deliberately chosen to allow the excessive verdict to stand because of his displeasure with the Church and its trial counsel.

18. During the chambers conference, Judge Swearinger asked Wollersheim's appellate counsel to see if he could arrange with the Church's counsel for a certain official of the Church of Scientology to call Judge Swearinger. The judge also showed bias against the Church and its counsel through derogatory references to the Church's counsel. The judge referred to the Church's counsel, Earl Cooley, as Earl "Fooley," because Mr. Cooley had alleged that there had been tampering with the jury.

19. Wollersheim's appellate counsel relayed Judge Swearinger's remarks to one of the Church's counsel who, after

client consultation, called Judge Swearinger on behalf of the Church of Scientology official with whom Judge Swearinger had asked to speak. In that telephone conversation with Church counsel, Judge Swearinger repeated the substance of his discourse with Wollersheim's appellate counsel concerning his state of mind with respect to the jury verdict in the Prior Action. The judge stated that at the time of the post-trial motion he probably would have done what the Court of Appeal eventually did -- i.e., reduce the jury's damage award by 27.5 million dollars. He explained, however, that he did not do so because such an action would have given credibility to Mr. "Fooley's" charge that the jury was tainted. Now, five years later, it has finally been revealed that not only was Mr. Cooley correct about the jury taint, but that it was Judge Swearinger, himself, who was the source of the jury's taint and corruption.

20. Judge Swearinger's comments, made long after the trial of the Prior Action, revealed that he possessed, throughout the Prior Action, unfounded suspicions and unfavorable beliefs regarding the Church, none of which were disclosed during the pendency of the Prior Action. Moreover, those comments make clear that the judge improperly permitted entry of a judgment he knew to be outrageous, and the result of bias and prejudice, in order to conceal that he, himself, was the source of the jury's bias and prejudice.

21. Judge Swearinger's concealment, during the Prior Action, of his suspicions, bias and prejudice denied the Church any opportunity to address and alleviate Judge Swearinger's concerns, or to challenge him for cause, thus resulting in an

unfair trial and an unjust verdict. Further, Judge Swearinger's refusal during the post-trial stages of the Prior Action to permit discovery into the source of the jurors' bias and prejudice prevented the Church from discovering, other than by chance, that the judge was also the source of jury bias and taint.

22. The Church was recently apprised of all of the foregoing information regarding Judge Swearinger's state of mind during the Prior Action. Prior to this time such information was not available to the Church despite the Church's diligence. The Church is free from contributory fault in the entry of the previous judgment.

23. The Church will suffer irreparable harm and irreplaceable loss if the final judgment entered in the Prior Action is permitted to stand, and the Church has no adequate remedy at law.

WHEREFORE, the Church prays for judgment as follows:

1. That the judgment rendered against the Church in the Prior Action be declared null and void and of no further effect; and

2. For such other and further relief as the Court may deem just and proper.

DATED: February 16, 1993

Respectfully submitted,

BOWLES & MOXON

By: ______________________
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In Pro Per

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JUN 21 1993
LOS ANGELES
SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF CALIFORNIA,

Plaintiff,

vs.

LARRY WOLLERSHEIM,

Defendant.

No. BC 074815

AMENDED MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S SPECIAL MOTION TO STRIKE

Date: July 2, 1993
Time: 9:00 a.m.
Dept: 14

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INTRODUCTION.

Plaintiff Church of Scientology of California ("Scientology") filed this action to set aside a $2.5 million judgment which was upheld by the District Court of Appeal, in Wollersheim v. Church of Scientology of California (1989) 212 Cal.App.3d 872, 260 Cal.Rptr. 331, and (1992) 3 Cal.App.4th 1290, 6 Cal.Rptr.2d 532, and which is currently pending before the California Supreme Court.[1]

This action was brought almost seven years after the trial verdict and eleven months after the allegedly "new evidence" upon which it is based came to the attention of Scientology's attorneys. It alleges improper conduct by trial judge Ronald Swearinger, but was conveniently filed shortly after Judge Swearinger died, so he can no longer defend himself. The action is untimely, improper, without merit, and filed to further harass defendant. Because it arises from defendant's exercise of his First Amendment right to petition the government (file a lawsuit), this action is subject to a special motion to strike under Code of Civil Procedure § 425.16,[2] which should be granted for the reasons set forth below.

I. THIS SPECIAL MOTION TO STRIKE IS AUTHORIZED BY § 425.16.

Recognizing the potential chilling effect of lawsuits brought primarily for the purpose of curbing the valid exercise of the constitutional rights of petition or freedom of speech,[3] the California Legislature last year added § 425.16 to the Code of Civil Procedure. Effective January 1, 1993, the section specifies that an action arising from a defendant's exercise of the constitutional right to petition the government shall be subject to a motion to strike unless the plaintiff can show a "probability" of success on the merits.[4]

---

[1] See discussion in footnote 13 below for a more detailed discussion of the appellate proceedings.

[2] Subsequent section references are to the Code of Civil Procedure, unless otherwise noted.

[3] The purpose of the legislation is set forth in its first subection: "The Legislature finds that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for redress of grievances. The Legislature also finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process." § 425.16(a).

Plaintiff's complaint against defendant falls squarely within § 425.16. The complaint seeks to set aside the judgment in the action entitled Larry Wollersheim v. Church of Scientology of California, Los Angeles Superior Court No. C 332 027 (the "Main Action"). The petition activity which is protected by this new statute includes "any written statement...made before a...judicial proceeding..." (§ 425.16(e).) This surely includes defendant Wollersheim's filing of a complaint in the Main Action. The complaint in this action arises from the defendant's exercise of his right to petition the government in one of its most fundamental forms, filing a lawsuit. Therefore, defendant brings this timely[5] special motion to strike.

II. THIS MOTION SHOULD BE GRANTED BECAUSE PLAINTIFF CAN NOT DEMONSTRATE A PROBABILITY THAT IT WILL PREVAIL ON ITS CLAIMS.

As demonstrated below, plaintiff cannot meet its burden of establishing a probability[6] that it will prevail on the merits of its claims, as required by § 425.16(b).[7] Therefore, this special motion to strike should be granted.[8]

---

[4] Section 425.16(b) provides, in pertinent part: "A cause of action arising from any act of that person in furtherance of the person's rigght of petition or free speech in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim."

[5] This special motion has been filed within 60 days of service of the complaint, as provided in § 425.16(f). See Plaintiff's proof of service, filed April 12, 1993.

[6] "Probable" is synonymous with "likely", and "probability" is synonymous with "likelihood". (Walbrook Insurance v. Liberty Mutual Insurance (1992) 5 Cal.App.4th 1445, 1461, 7 Cal.Rptr.2d 513; see also Black's Law Dictionary (Rev.4th Ed. 1968) p.1364 ["probability" means "likelihood"].) "A 'probable' consequence is one more likely to follow its cause than not..." (Bastian v. County of San Luis Obispo (1988) 199 Cal.App.3d 520, 533, 245 Cal.Rptr. 78.)

A. THIS COURT HAS NO JURISDICTION OVER THIS ACTION BECAUSE THE MAIN ACTION IS PENDING BEFORE THE CALIFORNIA SUPREME COURT.

The special motion to strike should also be granted because the Main Action is pending before the California Supreme Court, and this Court has no jurisdiction to hear this action. Plaintiff has acknowledged that the Main Action is currently pending before the California Supreme Court. (Complaint ¶ 4.)

C.C.P. § 916(a) provides in relevant part:

> "...the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby..."

Under this provision, a trial court has no power to vacate an appealed judgment while the appeal is pending. (Elsea v. Saberi (1992) 4 Cal.App.4th 625, 629, 5 Cal.Rptr.2d 742.)[9]

Furthermore, one department of the Superior Court cannot enjoin or otherwise interfere with the judicial act of another department in the same court. (Elsea v. Saberi, supra, 4 Cal.App.4th at 631.)

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[7] Unlike a demurrer, where the Court is limited to considering matters appearing on the face of the complaint (or matters of which judicial notice is taken), on a § 425.16 special motion to strike, the Court "shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based." § 425.16(b).

[8] In addition to the defects discussed in the following subsections, the complaint omits a necessary party -- the Superior Court of Los Angeles County, under § 389(a).

[9] Even if the complaint alleges extrinsic fraud (see discussion that the complaint alleges intrinsic fraud, in II-E below), the trial court does not have jurisdiction to vacate a judgment: "In effect the appeal removed from the jurisdiction of the Superior Court the subject-matter of the judgment. A motion to vacate for extrinsic fraud is embraced within the subject matter of a judgment appealed from." (Hurst v. Hazel Hurst Foundation for the Blind (1955) 134 Cal.App.2d 686, 689, 286 P.2d 53, 55, cited with approval in Beresh v. Sovereign Life Insurance Company of California (1979) 92 Cal.App.3d 547, 562, 155 Cal.Rptr. 74.)

B. THIS COURT HAS NO JURISDICTION OVER THIS ACTION BECAUSE IT IS MERELY A DISGUISED ATTEMPT TO BRING AN UNTIMELY MOTION FOR A NEW TRIAL.

The plaintiff's claims here, of judge and jury bias and misconduct, are claims that should have been raised in a motion for new trial in the Main Action. (§ 657 (1) & (2).) Such a motion must be filed within 15 days after notice of entry of judgment or 180 days after entry of judgment. (§ 659 (2).) The court has no jurisdiction to entergain an untimely motion for new trial. (Ehrler v. Ehrler (1981) 126 Cal.App.3d 147, 151, 178 Cal.Rptr. 642; Tri-County Elevator Co. v. Superior Court (1982) 135 Cal.App.3d 271, 277, 185 Cal.Rptr. 208).

Scientology, however, instead of raising these claims in a timely motion for new trial, has raised them in a separate action, almost seven years after the trial verdict in the Main Action, and has improperly attempted to depose Main Action jurors,[10] which is prohibited by law.[11] As discussed above, the Court has no jurisdiction to the relief sought here.

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[10] Plaintiff noticed depositions in this action of Main Action jurors and other court personnel before defendant had even appeared in this action. Depositions of Main Action jurors Andre Anderson and Terri Reuter were originally noticed for May 18, 1993. Depositions of Main Action court clerk Cynthia Buter (misspelled as Butler) and bailiff Antoinette Carrasco were originally noticed for May 28, 1993. (See defendant's Application for Ex Parte Order to Stay All Discovery and the Declaration of Laurie J. Bartilson in Opposition, both filed May 27, 1993, and Exhibit 9 (plaintiff's deposition notices) filed herewith.)

In addition, Scientology attempted to take depositions of Main Action jurors and court personnel in two federal actions. (Amd. O'Reilly Decl., Ex. 1, ¶ 10.)

[11] In Linhart v. Nelson (1976) 18 Cal.3d 641, 644-645, 134 Cal.Rptr. 813, the Court held that in civil cases parties may not subpoena jurors or other witnesses to support a claim of jury misconduct: "To allow a disappointed litigant to call witnesses in support of his motion [for new trial] could effectively allow retrial of his case. ...[P]ermitting jurors or other witnesses to testify for one party would mean that opposing parties -- unaware of the proposed testimony -- would be obligated to subpoena all jurors and other witnesses in preparation for hearing. [¶] Moreover, permitting counsel for the losing party to interrogate unwilling trial jurors touches the integrity of our venerable jury process. First, once aware that after sitting through a lengthy trial he himself may be placed on trial, only the most courageous prospective juror will not seek excuse from service. Secondly, if jury deliberations are subject to compulsory disclosure, independent thought and debate will surely be stifled."

C. THIS ACTION IS BARRED BECAUSE IT IS UNTIMELY AND PLAINTIFF HAS NOT EXERCISED DUE DILIGENCE IN RAISING THESE CLAIMS.

A party bringing an equitable action such as this to set aside a judgment must "[h]ave acted with due diligence in discovering the facts constituting the basis for relief." (Restatement 2nd, Judgments, § 70(2)(a), quoted in 8 Witkin, Cal. Procedure (3d ed. 1985), Attack on Judgment in Trial Court, § 204, p. 604.) He must also show diligence in seeking relief after discovery of the facts. (Witkin, supra, § 218, p. 622.) Grounds for disqualification of a judge, such as those alleged here, must be "presented at the earliest practicable opportunity after discovery of the facts constituting the ground for disqualification." § 170.3(c)(1). Plaintiff did not exercise due diligence here, either in discovering the alleged new facts, or in bringing them to the attention of the Court.

The judgment in the Main Action, which plaintiff attacks in this action, was rendered on July 22, 1986. (Complaint ¶ 1.) In post-trial interviews with the jurors, plaintiff says its attorneys learned that some jurors believed that they were being followed by members of Scientology, and that one juror said that the jury had been told by court personnel that during the trial Judge Swearinger had been the subject of vandalism. (Id. ¶ 7.) Plaintiff unsuccessfully requested discovery regarding these matters in post-trial motions in the Main Action. (Id. ¶ 8.) There is no indication in the complaint that plaintiff did anything further regarding this matter until March 1992.

On March 19 and 23, 1992, Scientology says its attorneys conducted interviews with William Horne which led Scientology to believe that Judge Swearinger was biased against Scientology. (Id., pars. 11-13.) Yet plaintiff waited almost a full year, until after Judge Swearinger had died, to file this action.

Thus, plaintiff filed this action almost seven years after the underlying events, and almost eleven months after plaintiff claims to have received the "new evidence". This is not the earliest practicable opportunity or due diligence, and the granting of the relief requested would be seriously prejudicial to defendant Wollersheim, forcing on him a burden to litigate matters now more than seven years old. (See McCreadie v. Arques (1967) 248 Cal.App.2d 39, 47, 56 Cal.Rptr. 188.)

Further, the time has long since expired for the plaintiff to seek relief from the judgment of this Court under § 473. (See Church of Scientology of California v. Armstrong (1991) 232 Cal.App.3d 1060, 1069-70, 283 Cal.Rptr. 917.)

D. PLAINTIFF DOES NOT PLEAD AND CAN NOT SHOW THAT IT HAS A MERITORIOUS DEFENSE IN THE MAIN ACTION.

The relief sought by plaintiff in this action must also be denied because plaintiff does not plead, and can not show, that it has a meritorious defense:

> "A valid judgment will not be set aside merely because it was obtained by extrinsic fraud or mistake, in order to give the barren right of an adversary hearing. The plaintiff must plead and prove that he has a meritorious case, i.e., a good claim or defense which, if asserted in a new trial, would be likely to result in a judgment favorable to him."

(8 Witkin, Cal. Procedure, supra, § 216, p. 620, quoted in New York Higher Education Assistance Corporation v. Siegel (1979) 91 Cal.App.3d 684, 688-689, 154 Cal.Rptr. 200.)

The complaint in this action does not even allege that plaintiff has a meritorious case which would likely result in a favorable judgment in a new trial. Furthermore, upon weighing the entire trial court record, the First District Court of Appeal unanimously concluded that "there is ample evidence to support the jury's verdict on Wollersheim's claim for intentional infliction of emotional distress." (Wollersheim v. Church of Scientology, supra, 212 Cal.App.3d at 882.) This conclusion has remained undisturbed in the subsequent appellate litigation regarding the punitive damages issue. (See fn.13 below.)

E. PLAINTIFF'S COMPLAINT IS NOT SUFFICIENT TO SET ASIDE THE JUDGMENT BECAUSE IT ALLEGES AT MOST INTRINSIC FRAUD.

Plaintiff's complaint alleges intrinsic, not extrinsic, fraud. However, this is not grounds for an equitable action to set aside a judgment. As Witkin notes:

> "Ordinarily, if the aggrieved party is aware of the proceeding and is not prevented from appearing, any fraud is intrinsic and not a basis for equitable relief..." ... "If the aggrieved party had a reasonable opportunity to appear and litigate his claim or defense, fraud occurring in the course of the proceeding is not a ground for equitable relief. The theory is that these matters will ordinarily be exposed during the trial by diligence of the party and his counsel, and that the occasional unfortunate result of undiscovered perjury or other intrinsic fraud must be endured in the interest of stability of final judgments."

(8 Witkin, Cal Procedure, supra, § 207, p. 606; § 221, p. 625; Kulchar v. Kulchar (1969) 1 Cal.3d 467, 472-473, 82 Cal.Rptr. 489.)

Here, Scientology was not prevented from appearing and defending in the Main Action by any extrinsic fraud. Any fraud alleged is intrinsic and not grounds for the relief sought.

F. PLAINTIFF CAN NOT DEMONSTRATE A PROBABILITY THAT IT WILL PREVAIL ON ITS CLAIM IN THIS ACTION THAT JUDGE SWEARINGER SHOULD HAVE BEEN DISQUALIFIED.

Plaintiff's theory of this action seems to be that Judge Swearinger was biased against plaintiff and therefore should have been disqualified under §§ 170.1 and 170.6. (Complaint ¶ 6.) However, the facts alleged in the complaint do not state grounds for disqualification under § 170.1. Scientology had no claim against Judge Swearinger under § 170.6 because it had already used its § 170.6 claim to disqualify Judge Lopez in the Main Action. (Amd. O'Reilly Decl., Ex. 1, ¶ 6.) In any case, any such disqualification claim may only be reviewed by a timely petition for writ of mandate -- not by a subsequent independent action. (§ 170.3(d); People v. Hull (1991) 1 Cal.4th 266, 276, 2 Cal.Rptr.2d 526.) This requirement, not met here, prevents the "intolerable windfall" which Scientology seeks here:

> "...an 'intolerable windfall' would result if a challenging party were to fail to seek immediate review of an unsuccessful challenge, attempt to obtain a favorable judgment, and if that effort failed, take a 'second bite at the apple' by reasserting the

peremptory challenge on appeal."

(Andrisani v. Saugus Colony Limited (1992) 8 Cal.App.4th 517, 526, 10 Cal.Rptr.2d 444.)

G. PLAINTIFF CAN NOT DEMONSTRATE A PROBABILITY THAT IT CAN PROVE KEY FACTS WHICH IT ALLEGES IN ITS COMPLAINT.

The declarations presented by defendant in support of this motion indicate that key "facts" alleged in the complaint did not occur. Andre Anderson, the jury foreperson, who was present at all proceedings in front of the jury and throughout all the jury deliberations in the Main Action, states unequivocally that there was no reference to nor comment, by any juror or any other person in his present, about Judge Swearinger's tires being slashed, his dog dying, or that he was being followed, harassed or bothered by Scientology. Anderson Decl., Ex. 3. Antoinette Carrasco Saldana, one of the court bailiffs who was present during the trial of the Main Action, states unequivocally that during the trial she was not aware of any unfavorable beliefs or biases held by Judge Swearinger against Scientology, that Judge Swearinger never mentioned any strange occurrences for which the Judge suspected Scientology was or might be responsible, or that the Judge's tires were slashed; and that they have no knowledge of any statements regarding any of these matters to any member of the jury during the trial. (Saldana Decl., Ex. 5 .) After the verdict, Wollersheim's counsel met with all the jurors (except one alternate), had extensive discussions of the jury deliberations process, and there was no mention of any of these matters. (Amd. O'Reilly Decl., Ex. 1, ¶ 9.)

In contrast, the complaint (at ¶¶ 7, 9, 11-14, 17-19) cites only hearsay, and sometimes double or triple hearsay, in support of its claims that Judge Swearinger was biased against Scientology or that he somehow infected the jury.

H. THIS ACTION IS BARRED BY COLLATERAL ESTOPPEL BECAUSE THE CLAIMS MADE BY PLAINTIFF HERE WERE ALREADY RAISED BY PLAINTIFF AND REJECTED BY THE COURTS IN THE MAIN ACTION AND IN ANOTHER PROCEEDING.

In the course of the Main Action, Scientology launched unsuccessful attacks on Judge Ronald Swearinger, accusing him of bias and prejudice, particularly after the Judge ruled against Scientology on an important point. This included filing an action in approximately March of 1986, Church of Scientology v. Superior Court, USDC-CDCal, CV 86-1362 ER, against Judge Swearinger and the Los Angeles Superior Court, which was dismissed by Judge Edward Rafeedie.[12] It also included a formal motion in the Main Action to disqualify Judge Swearinger in early May 1986, which was denied. (Amd. O'Reilly Decl., Ex. 1, ¶ 8b.)

In its appeal of the trial court verdict, Scientology, in additional to its constitutional claims, raised "a broad spectrum of issues" which the Court of Appeal concluded had no merit. (Wollersheim v. Church of Scientology (1989) 212 Cal.App.3d 872, 880-881, 260 Cal.Rptr. 331, affirmed on these matters (1992) 3 Cal.App.4th 1290, 6 Cal.Rptr.2d 532 fn.1.)[13]

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[12] Defendant requests that the Court take judicial notice of the judicial proceedings and decisions of other courts referred to here and elsewhere in this memorandum, pursuant to Evidence Code §§ 451(a), 452(a), (c), (d), & (h), & 453. Copies of federal court decisions cited herein are included with the exhibits filed herewith.

[13] As the complaint notes (¶ 4), the U. S. Supreme Court vacated judgment in 1991, the Court of Appeal again entered judgment in 1992, and the California Supreme Court granted Scientology's petition for review in July 1992, holding the case pending decision by the U. S. Supreme Court in TXO Production Corp. v. Alliance Resources Corp. and by the California Supreme Court in Gourley v. State Farm Mutual Automobile Ins. Co. and MGW, Inc. v. Fredericks Development Corp. The July 1992 Court of Appeal decision, responding to the remand from the U. S. Supreme Court, addressed only issues regarding punitive damages and reaffirmed its previous decision as to all other matters. Wollersheim v. Church of Scientology of California (1992) 3 Cal.App.4th 1290, 6 Cal.Rptr. 2d 532, 534 fn.1. The cases the California Supreme Court is holding Wollersheim pending decision in all deal with punitive damages issues. See MGW, supra (7/9/92) 10 Cal.Rptr.2d 85, 832 P.2d 586; Gourley, supra (1991) 53 Cal.3d 121, 130, 3 Cal.Rptr.2d 666, granted 7/9/92; discussion re TXO, supra, in Daily Journal, US Supreme Court Pending Cases (5/27/93) 32-33. Thus, the courts have upheld the Wollersheim verdict as to all challenges except for the punitive damages issue.

Therefore, the claim by Scientology in this action that Judge Swearinger was biased against Scientology is barred by the doctrine of collateral estoppel, which prevents plaintiff from re-litigating issues which were or could have been raised. (Clemente v. State (1985) 40 Cal.3d 202, 222, 219 Cal.Rptr. 445.)

I. THIS ACTION IS PART OF PLAINTIFF'S LITIGATION STRATEGY TO USE THE COURTS TO HARASS ITS OPPONENTS.

Scientology embraces the use of litigation to harass its opponents. Its founder, L. Ron Hubbard, has described this practice as follows:

> The purpose of the suit is to harass and discourage rather than to win. [¶] The law can be used very easily to harass, and enough harassment on somebody who is simply on the thin edge anyway...will generally be sufficient to cause his professional decease. If possible, of course, ruin him utterly.[14]

Vicki Aznaran, who was one of the highest worldwide officials of Scientology, states in her declaration:

> Hubbard writings encourage Scientologists to pursue litigation purely for harassment without regard to the merits of a claim to cause enemies to fold. ... [¶]
> It is the stated policy and practice of Scientology to use the legal system to abuse and harass its enemies. This crude, fundamental directive of Scientology is no secret. The policy is to do anything and everything possible to harass the opposing litigant without regard to whether any particular motion or maneuver is appropriate or warranted by the facts or applicable law. That policy was followed in every legal case I was involved with or learned about while a member of the Sea Organization. The management of Scientology consistently expressed and demonstrated a complete disdain for the court system, viewing it as nothing more than a method to harass

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[14] From L. Ron Hubbard, The Technical Bulletins of Dianetics and Scientology, Volume II, p. 157. A copy of the relevant portion of this document is attached as Exhibit A to, and is authenticated by, Armstrong Decl., Ex. 6, ¶ 5.

Top Scientology official Jane Kember, in an internal Scientology document, explained that Scientology legal strategy in the U.S. is to use litigation as a financial club: "The button used in effecting settlement is purely financial. In other words, it is more costly to continue the legal action than to settle in some fashion. ... [¶] Therefore, it is imperative that legal US Dev-T his opponents and their lawyers with correspondence (a lawyer's letter costs approx $50), phone calls (time costs), interrogatories, depositions and whatever else legal can mock up. [¶] One of the bright spots of US legal is that even if you lose you don't pay your opponent for his lawyers fees." A copy of the document containing this statement is attached as Exhibit B to, and is authenticated by, Armstrong Decl., Ex. 6, ¶ 6. The phrase "Dev-T" is a term which Scientology uses to mean to cause someone to do unnecessary work. Id.

enemies.

Aznaran Decl., Ex. 7, 4:3-5, 5:3-14; see also Armstrong Decl., Ex. 6, ¶¶ 4, 8.

Scientology's use of litigation to harass opponents[15] is essentially an application of its "Fair Game" doctrine.[16] Under this doctrine, enemies of Scientology can be "deprived of property or injured by any means by any Scientologist" or "tricked, sued or lied to or destroyed".[17]

Defendant Wollersheim has himself been a victim of the Scientology litigation harassment strategy, of which this action is a part. This includes being subjected to a six-month trial in the Main Action, countless meritless motions by Scientology, and having to oppose at least six (ultimately unsuccessful) emergency writ petitions to the Court of Appeal (Amd. O'Reilly Decl., Ex. 1, ¶ 12.)[18]

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[15] In Church of Scientology of California v. Cazares (5 Cir. 1981) 638 F.2d 1272, 1290, the court ruled that the civil rights action filed by Scientology against the Mayor of Clearwater, Florida, "was frivolous, unreasonable and groundless. In Church of Scientology of California v. McLean (5 Cir. 1980) 615 F.2d 691, 693, Scientology moved to disqualify one of defendants' attorneys in a slander suit it had filed; the court found Scientology's position "not only without merit but frivolous." In Church of Scientology of California v. Siegelman (USDC, SDNY 1979) 475 F.Supp. 950, 951, the court referred to "the litigious Church of Scientology".

[16] The "Fair Game" doctrine is quoted and/or discussed in Church of Scientology of California v. Armstrong (1991) 232 Cal.App.3d 1060, 1067, 283 Cal.Rptr. 917; Wollersheim v. Church of Scientology of California (1989) 212 Cal.App.3d 872, 879-880; and Allard v. Church of Scientology of California (1976) 58 Cal.App.3d 439, 443 fn.1, 447 fn.4, 129 Cal.Rptr. 797; see also Armstrong Decl., Ex. 6, ¶¶ 4, 7-8; Aznaran Decl., Ex. 7, 2:10-5:14.

[17] Judge Paul G. Breckenridge, Jr., made the following observations about Scientology in Church of Scientology of California v. Armstrong, Los Angeles Superior Court, No. C 420153, which decision was affirmed in Church of Scientology of California v. Armstrong (1991) 232 Cal.App.3d 1060, 1074, 283 Cal.Rptr. 917: "In 1970 a police agency of the French Government conducted an investigation into Scientology and concluded, 'this sect, under the pretext of "freeing humans" is nothing in reality but a vast enterprise to extract the maximum amount of money from its adepts by (use of) pseudo-scientific theories, by (use of) "auditions" and "stage settings" (lit. to create a theatrical scene) pushed to extremes (a machine to detect lies, its own particular phraseology...), to estrange adepts from their families and to exercise a kind of blackmail against persons who do not wish to continue with this sect.' From the evidence presented to this court in 1984, at the very least, similar conclusions can be drawn. In addition to violating and abusing its own members civil rights, the organization over the years with its 'Fair Game' doctrine has harassed and abused those persons not in the Church whom it perceives as enemies. The organization clearly is schizophrenic and paranoid..." Memorandum of Intended Decision, June 20, 1984, p. 8, a copy of which is attached as Exhibit C to, and authenticated in ¶ 10 of, Armstrong Decl., Ex. 6. On July 20, 1984, the court issued an order deeming its memorandum of intended decision as its statement of decision.

While the Main Action was pending, Scientology filed a federal RICO suit against Wollersheim, as well as his attorneys and his two primary expert witnesses in the Main Action; this case was finally dismissed last year. (Religious Technology Center v. Wollersheim (9 Cir. 1986) 796 F.2d 1076, cert. den. 479 US 1103; dismissed (1992) 971 F.2d 364.) This was in addition to the federal action filed by Scientology to disqualify Judge Swearinger (Amd. O'Reilly Decl., Ex. 1, ¶ 8a). In both federal actions and in this action, Scientology improperly attempted to depose jurors and court personnel from the Main Action (see fn.10).

In addition, Scientology has consciously attempted to deprive Wollersheim of counsel and key witnesses and evidence in the Main Action, and has subjected him to its Fair Game policy. (Wollersheim Decl., Ex. 2.)

J. THIS ACTION IS PART OF PLAINTIFF'S LITIGATION STRATEGY OF ATTACKING JUDGES WHO RULE AGAINST THEM AS BIASED.

Scientology's litigation strategy includes attacking judges who rule against it, attempting to disqualify them based on claims of bias and prejudice. (Armstrong Decl., Ex 6, ¶ 9.)[19] Scientology pursued this strategy with a vengeance in the Main Action and derivative cases, disqualifying Judge Lopez under § 170.6 and attempting to disqualify Judges Swearinger and Margolis and the entire Los Angeles County Superior Court for bias in the Main Action, and filing an unsuccessful separate federal action, Church of Scientology v. Superior Court, USDC-C.D.Cal., CV 86-1362, which sought to disqualify Judge Swearinger in the Main Action because of alleged bias, as well as attempting to disqualify the entire U. S. District Court for the Central District of California because of alleged bias, in the federal "RICO" action filed against Wollersheim and his counsel and expert witnesses, RTC v. Wollersheim. (Amd. O'Reilly Decl., Ex. 1, ¶¶ 4, 5, 6 & 8.) This new lawsuit is merely the continuation of the same strategy with another vehicle.

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[18] In addition, from the beginning of the pre-trial proceedings until tn=he end of the case, Wollersheim's counsel had to spend approximately $450,000 on security to protect Wollersheim, his counsel, and his witnesses from threatened violence from a Scientology mob which subjected Wollersheim and his counsel to constant harassment and abuse. (Amd. O'Reilly Decl., Ex. 1, ¶ 11; Wollersheim Decl., Ex. 2.)

[19] See also Church of Scientology of California v. Cooper (DC Cal. 1980) 495 F.Supp. 455, 461, where the court ruled that plaintiff's recusal motion was based on false allegations but nonetheless granted the recusal motion; United States v. Heldt (DC Cir. 1981) 668 F.2d 1238, 1269-74, cert.den. 102 S.Ct. 1971, a criminal case against top Scientology officials, where the Court of Appeals rejected the defendants' arguments that trial Judge Richey should have been disqualified and called them "somewhat disingenuous".

K. PLAINTIFF HAS UNCLEAN HANDS AND IS NOT ENTITLED TO THE EQUITABLE RELIEF SOUGHT.

This lawsuit seeks equitable relief, which should be denied because plaintiff has unclean hands.

> "Under the 'unclean hands' doctrine, a party is barred from relief if he has engaged in any unconscientious conduct directly related to the transaction or matter before the court."

(DeRosa v. Transamerica Title Insurance Co. (1989) 213 Cal.App.3d 1390, 1395, 262 Cal.Rptr. 370.)

Here, as demonstrated above and in the footnote, plaintiff Scientology has engaged in abusive and unconscientious conduct directly related to the Main Action, the judgment in which this lawsuit seeks to set aside. This includes attempting to deprive defendant of his right to petition the government through use of litigation to harass him, falsification/ concealment of crucial evidence,[20] improper attempts to depose Main Action jurors and court personnel, efforts to deprive defendant of counsel, key witnesses and evidence, and subjecting him to the "Fair Game" policy. Therefore, equitable relief should be denied because of plaintiff's unclean hands.

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[20] Vicki Aznaran, then the top ecclesiastical authority within Scientology, states under penalty of perjury that after the judge in the Main Action ordered production of Wollersheim's folders, she "removed contents that might have been damaging to Scientology or might have supported Wollersheim's claims against Scientology. For example, I removed evidence of events involving his family, the anguish this caused him, evidence of disconnection from family and evidence of fair game." Aznaran Decl., Ex. 7, 6:1-9. Former Scientology attorney Joseph Yanny also states that during the Main Action there was

CONCLUSION.

Defendant's special motion to strike falls squarely within the scope of § 425.16. Plaintiff's action arises from defendant's exercise of his First Amendment right to petition the government by filing a lawsuit. Plaintiff cannot meet its burden of establish a probability that it will prevail in the action, for the reasons set forth above. Defendant's special motion to strike should therefore be granted and defendant should be awarded his attorneys' fees and costs.[21]

Dated: June 17, 1993

Respectfully submitted,

Daniel Leipold
Hagenbaugh & Murphy

Mark Goldowitz

Special Counsel for Defendant

By Mark Goldowitz

"wholesale destruction of evidence, theft of documents from private persons, and attempts to infiltrate the Court chambers of [Judge] Swearinger." Yanny Decl., Ex. 8, 32:25-27.

[21] Section 425.16(c) provides that a prevailing defendant on a special motion to strike "shall be entitled to his or her attorney's fees and costs." This language is mandatory. Defendant should therefore be awarded his fees and costs, which will be established by separately noticed motion if attempts at informal resolution of this matter do not succeed.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 701 S. Parker, Ste. 8200, Orange, California, 92668.

On June 21, 1993 I served the foregoing document described as: NOTICE OF RULING ON DEFENDANT'S EX PARTE APPLICATION FOR RELIEF FROM MISTAKE, ORDER RE EX PARTE APPLICATON FOR RELIEF FROM MISTAKE, and AMENDED MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF DEFENDANT'S SPECIAL MOTION TO STRIKE on the parties in this action

[] by placing the true copies thereof enclosed in sealed envelopes addressed as stated in the attached mailing list:

[X] by placing [] the original [X] a true copy thereof enclosed in sealed envelopes addressed as follows:

Laurie Bartilson
BOWLES & MOXON
6255 Sunset Blvd. Ste. 2000
Hollywood, California, 90028
Also sent via Facsimile

[X] **BY MAIL**

[] I deposited such envelope in the mail at , California. The envelope was mailed with postage thereon fully prepaid.

[X] I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Orange, California.

[] **PERSONAL SERVICE** - I delivered such envelope by hand to the offices of the addressee.

Executed on at , California.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Nancy J. Greenan

Nancy J. Greenan

DECLARATION OF GERALD ARMSTRONG

I, Gerald Armstrong, having personal knowledge of the following, hereby declare and state:

1. I became involved with Scientology as a customer in 1969 in Vancouver, British Columbia. I worked on staff there in 1970 and in February 1971 joined the Sea Organization (SO or Sea Org) in Los Angeles. I was flown to Spain and joined the Sea Org's flag ship, "Apollo," in Morocco. L. Ron Hubbard, the Sea Org's "Commodore," was on board and operated Scientology internationally through the "crew" which numbered, during my stay on board of four and a half years, around four hundred. All my staff positions on board involved personal contact with L. Ron Hubbard, Mary Sue Hubbard, administrative organization staff and people in the ports and countries the "Apollo" visited, and included "Ship's Representative" (legal representative), "Port Captain" (public relations officer), and "Information Officer" (intelligence officer).

2. In the fall of 1975 after the ship operation moved ashore in Florida I was posted in the Guardian's Office (GO) Intelligence Bureau connected to Hubbard's Personal Office. From December 1975 through June 1976 I held the post of Deputy LRH External Communications Aide, a relay terminal for Hubbard's written and telex traffic to and from Scientology organizations. From July 1976 to December 1977 I was assigned, on Hubbard's order, to the "Rehabilitation Project Force" (RPF), the SO prison system. In 1978 I worked in Hubbard's cinematography crew in La Quinta, California, making movies under his direction until the fall of that year when he again

assigned me to the RPF, this time for eight months first in La Quinta, then at a newly purchased base in Gilman Hot Springs near Hemet, California. When I got out of the RPF in the Spring of 1979 and until the beginning of 1980, I worked in Hubbard's "Household Unit" (HU) at Gilman, the SO unit which took care of Hubbard's house, personal effects, transport, meals and so forth, as the "Purchaser," "Renovations In-Charge" and "Deputy Commanding Officer HU."

3. Throughout 1980 and until I left the organization in December 1981 I held the organization posts in Hubbard's "Personal Public Relations Bureau" of "LRH Archivist" and "LRH Personal Researcher." I assembled in Los Angeles an archive of Hubbard's writings and other materials relating to his history to be used as, inter alia, the basis for a biography to be written about the man. I also worked in Los Angeles for the first few months of 1980 on Mission Corporate Category Sortout (MCCS), which had the purpose of restructuring the Scientology enterprise so that Hubbard could continue to control it without being liable for its actions. Beginning in the fall of 1980 and continuing until my departure, I provided the biographical writings and other materials, as I collected and organized them, to Omar Garrison, who had contracted with the organization to write the Hubbard biography. I interviewed many people who had known Mr. Hubbard at periods throughout his life, including almost all of his known living relatives. I traveled several thousand miles collecting biographical information and conducting a genealogy search, and arranged the purchase of a number of collections of Hubbard-related

documents and other materials from individual collectors.

4. As a result of the activities described above, I have become very familiar with Scientology policies, practices, and policy documents. I also know that the Church of Scientology of California, as part of the Scientology organization, has followed and implemented these policies and practices, including those described below.

5. Attached to this declaration as Exhibit A is a true copy of a portion of volume II of The Technical Bulletins of Dianetics and Scientology, by L. Ron Hubbard, the founder of Scientology. It includes (at page 157) the following description of Scientology's practice of using litigation to harass its opponents:

> The purpose of the suit is to harass and discourage rather than to win. [¶] The law can be used very easily to harass, and enough harassment on somebody who is simply on the thin edge anyway...will generally be sufficient to cause his professional decease. If possible, of course, ruin him utterly.

6. Attached to this declaration as Exhibit B is a true copy of an internal Scientology document, Guardian Order 166, dated October 7, 1971. This document was written by the then Guardian, Jane Kember, at that time the most senior Scientology official under L. Ron Hubbard and his wife, Mary Sue Hubbard. GO 166 was included in the Intelligence Course Pack which I studied while I was the Intelligence Officer on Scientology's ship the "Apollo" in the 1970's. This document includes the following explanation that Scientology legal strategy in the U.S. is to use litigation as a financial club:

> The button used in effecting settlement is purely financial. In other words, it is more costly to continue the legal action than to settle in some fashion. ... [¶]

> Therefore, it is imperative that legal US Dev-T his opponents and their lawyers with correspondence (a lawyer's letter costs approx $50), phone calls (time costs), interrogatories, depositions and whatever else legal can mock up. [¶] One of the bright spots of US legal is that even if you lose you don't pay your opponent for his lawyers fees.

The phrase "Dev-T" is a term which Scientology uses to mean to cause someone to do unnecessary work.

7. Since leaving the Scientology organization, I have monitored the conduct of the organization, including the Church of Scientology of California. I am familiar with, and have been a target and victim of the "fair game" doctrine, which was described by the California Court of Appeal decisions in Church of Scientology v. Armstrong, Allard v. Church of Scientology, and Wollersheim v. Church of Scientology. Although Scientology claims that the "fair game" doctrine has been abandoned, I know from personal experience that this is not true, at least as recently as this year. For instance, Scientology attempted in the first few months of 1993 to have me jailed for contempt of court based on the false declaration of a Scientologist lawyer, Laurie Bartilson, for acts which Scientology itself set up. This is only the most recent of over a decade of "dirty tricks" which Scientology personnel have directed at me.

8. From my personal experience, I know that Scientology does use the litigation approach described by Hubbard and Kember in the quotes above. In various cases, Scientology has subjected me to over 35 days of depositions. As a paralegal working on cases involving Scientology for 16 months for Boston attorney Michael Flynn and for almost two years for California attorney Ford Greene (to the present), I have observed

Scientology's litigation practices. Scientology regularly attempts to bludgeon the opposition into submission with a blizzard of meritless paper, motions, depositions, appeals, writs, Bar complaints, criminal complaints, perjured testimony, and other improper and abusive tactics.

9. I am also aware that Scientology uses an attack strategy against judges who rule against it, which includes claims of bias and prejudice and frequently personal attacks. For instance, in my case, Church of Scientology of California v. Armstrong, L.A. Superior Court No. C 420153, Scientology twice tried unsuccessfully to disqualify Judge Breckenridge from the case because of alleged bias, and levied personal attacks on him, accusing him publicly of Nazi affiliation. Similarly, in Aznaran v. Church of Scientology of California, U.S.D.C. C.D.Cal # CV-88-1786-JMI, Scientology unsuccessfully attempted to recuse Judge James Ideman because of alleged bias.

10. Attached to this declaration as Exhibit C is a true copy of the June 20, 1984 decision by Judge Paul G. Breckenridge, Jr., in the case of Church of Scientology of California v. Gerald Armstrong, L.A. Superior Court No. C 420153, which was affirmed on appeal at 232 Cal.App.3d. 1060, 283 Cal.Rptr. 917 (1991).

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed this 4th day of June, 1993, at Oakland, California.

Gerald Armstrong

Ford Greene
Lawyer

HUB LAW OFFICES
711 Sir Francis Drake Boulevard
San Anselmo, California 94960-1949
(415) 258-0360

License No. 107601
Facsimile (415) 456-5318

July 23, 1993

Laurie J. Bartilson
BOWLES & MOXON
6255 Sunset Boulevard, Suite 2000
Los Angeles, California 90028

By Telecopier
213-953-3351

RE: *Church of Scientology International v. Armstrong*
Los Angeles Superior Court
Case No. **BC 052 395**

Dear Ms. Bartilson:

In light of the fact that the injunction you claim my client to have violated does not prohibit Mr. Armstrong from providing declarations to private litigant defendants, and in light of the fact that your organization sued Mr. Wollersheim and Mr. Armstrong's perceived injunctional transgression is to have executed a declaration in support of defendant Wollersheim's motion to dismiss your suppressive litigation against him, any OSC that you seek on these grounds is without merit and frivolous.

We will oppose your meritless OSC and seek sanctions for having to again deal with your spurious efforts at using litigation as a tool of repression.

Sincerely,

FORD GREENE

:acg
cc: Paul Morantz (By Telecopier)
Andrew H. Wilson (By Telecopier)

1785

HUB LAW OFFICES
711 SIR FRANCIS DRAKE BOULEVARD
SAN ANSELMO, CALIFORNIA 94960-1949
(415) 258-0360

FORD GREENE
LAWYER

LICENSE NO. 107601
FACSIMILE (415) 456-5318

July 23, 1993
1207 PDT

Laurie J. Bartilson, Esquire
Bowles & Moxon
6255 Sunset Boulevard
Suite 2000
Los Angeles, CA 90028

BY FAX (213)953-3351

Dear Ms. Bartilson:

I have been directed by Mr. Greene to ask you to fax to this office immediately all your papers relating to your attempt to have me held in contempt for providing a declaration to Lawrence Wollersheim.

Thank you for your attention to this matter.

Yours sincerely,

Gerald Armstrong
for Ford Greene, Esquire

:ga

1786

BOWLES & MOXON
ATTORNEYS AT LAW
6255 SUNSET BOULEVARD
SUITE 2000
HOLLYWOOD, CALIFORNIA 90028

(213) 953-3360
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TIMOTHY BOWLES *
KENDRICK L. MOXON ±
LAURIE J. BARTILSON †
HELENA K. KOBRIN ‡

* ALSO ADMITTED IN OREGON
± ALSO ADMITTED IN THE DISTRICT OF COLUMBIA
† ALSO ADMITTED IN MASSACHUSETTS
‡ ALSO ADMITTED IN FLORIDA
§ ALSO ADMITTED IN ILLINOIS
# ALSO ADMITTED IN OKLAHOMA

PETER M. JACOBS
RANDALL A. SPENCER §
ROBERT A. WIENER #
LESLIE T.W. SOASH
AVA MARIE SANDLIN

OF COUNSEL
JEANNE M. GAVIGAN
MARCELLO M. DI MAURO
KAREN L. BROWN
KAREN D. HOLLY

July 23, 1993

RECEIVED
JUL 23 1993
HUB LAW OFFICES

BY TELEFAX AND U.S. MAIL

Ford Greene
711 Sir Francis Drake Blvd.
San Anselmo, California 94960-1949

Re: Church of Scientology International v. Gerald Armstrong

Dear Mr. Greene:

I am in receipt of the attached letter from your client, Gerald Armstrong.

In light of the unfounded accusations which you have leveled at me in the past, I am sure you can appreciate that I am unwilling to engage in any direct communication with your client, absent your written authorization.

As soon as the order to show cause papers are completed, I will fax them to your office, as has always been our custom. They are as yet incomplete.

Please advise whether or not you intend to oppose the application.

Sincerely,

BOWLES & MOXON

Laurie J. Bartilson

LJB:mfh
Enc.
cc: Paul Morantz **BY TELEFAX AND U.S. MAIL**
cc: Andrew H. Wilson **BY TELEFAX AND U.S. MAIL**

HUB LAW OFFICES
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Telephone: (415) 258-0360

PAUL MORANTZ, ESQ.
P.O. Box 545
Pacific Palisades, CA 90272
(310) 459-4745

Attorney for Defendant
GERALD ARMSTRONG

FILED
LOS ANGELES SUPERIOR COURT
JUL 26 1993
JAMES H. DEMPSEY, CLERK
BY INNA R. MATTHEWS, DEPUTY

FILED
NOV 16 1994
HOWARD HANSON
MARIN COUNTY CLERK
BY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation; Plaintiffs, vs. GERALD ARMSTRONG; DOES 1 through 25, inclusive, Defendants.	157680 No. **BC 052395** **DEFENDANT ARMSTRONG'S MEMORANDUM IN OPPOSITION TO APPLICATION FOR AN ORDER TO SHOW CAUSE RE CONTEMPT; REQUEST FOR MONETARY SANCTIONS** Date: July 26, 1993 Time: 8:30 a.m. Dept: 86 Trial Date: Stayed Discovery Cut Off: Stayed Motion Cut Off: Stayed

I. INTRODUCTION

In a familiar fit of pique Scientology asks this Court to conclude that Gerald Armstrong has violated an order of this Court. The request is childish and spurious because it has no basis in either law or reality. Scientology claims that Armstrong has violated an aspect of a preliminary injunction issued by the Honorable Ronald M. Sohigian on May 28, 1992. What Scientology claims Armstrong to have transgressed and violated, however, does not exist. What is before the Court is merely another manifestation of Scientology's compulsion to use the legal system as a club to beat its critics, one more time beating Gerald Armstrong, into the dirt. The Application for the Order to Show Cause must be denied because not only does it constitute harassive and abusive litigation tactics but it is a waste of this Court's time and resources, and the taxpayers' money.

Due to the application's complete lack of merit, and due to the fact that Church of Scientology International and its counsel Laurie J. Bartilson and the law firm Bowles and Moxon have disregarded Armstrong's request to desist from prosecuting this meritless exercise, Gerald Armstrong seeks monetary sanctions in the amount of $1,569.75 against Church of Scientology International and its counsel Laurie J. Bartilson and the law firm Bowles and Moxon.

II. STATEMENT OF FACTS

A. The Factual Basis For The Alleged Violation

On July 23, 1993, counsel for Armstrong received a telecopied letter from scientologist attorney Laurie Bartilson which stated in its entirety the following:

> Please take notice that on Monday, July 26, 1993, at 8:30 a.m., plaintiff Church of Scientology International will appear in Department 86 of the Los Angeles Superior Court, and request that an order issue, pursuant to Code of Civil Procedure Section 1212, directing Gerald Armstrong to show cause why he should not be held in contempt of court and sanctioned. Plaintiff intends to base its request on the declaration, dated June 4, 1993, which Armstrong provided to Larry Wollersheim and his attorneys in direct contravention of the injunction issued in this case by Judge Sohigian on May 28, 1992.

(Declaration of Ford Greene ["Greene Decl."], Ex. A.)

B. The Preliminary Injunction

On May 28, 1992 Judge Sohigian issued the following preliminary injunction:

> Defendant Gerald Armstrong, his agents, and persons acting in concert or conspiracy with him (excluding attorneys at law who are not said defendant's agents or retained by him) are restrained and enjoined during the pendency of this suit pending further order of court from doing directly or indirectly any of the following:
>
> Voluntarily assisting any person (not a governmental organ or entity) intending to make, intending to press, intending to arbitrate, or intending to litigate a claim against the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986 regarding such claim or regarding pressing, arbitrating, or litigating it.
>
> Voluntarily assisting any person (not a governmental organ or entity) arbitrating or litigating a claim against the persons referred to in sec 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986.

(Greene Decl., Ex. B.)

It is clearly discernable that, whatever infirmities intrinsic to the injunction there are, Armstrong is prohibited from "voluntarily assisting" persons with claims "against" Scientology. In other words, Armstrong is prohibited from assisting private litigant plaintiffs in litigation in which Scientology is a party. The injunction is completely silent, however, as to Armstrong's voluntarily assisting persons against whom Scientology is litigating any claim of its own. Such injunctive silence, however, is explicit in its denial of Scientology's application for injunctive relief as to all other aspects of the subject settlement agreement Scientology sought to have enforced, which includes defendants adverse to Scientology. Thus, the injunction does not in any way prohibit Armstrong from assisting private litigant defendants.

C. Wollersheim Is A Private Litigant Defendant

On or about February 16, 1993, in LASC No. BC 074815, (hereinafter "Wollersheim II") Scientology sued Larry Wollersheim in an effort to eradicate the jury verdict in Wollersheim v. Church of Scientology as reported in 1989 at 212 Cal.App.3d 872. (hereinafter "Wollersheim I".) [1]

---

[1] In Wollersheim I, the Second District characterized Scientology as the modern day equivalent to the Christian Inquisition because Scientology seeks to "neutralize" its critics or "heretics" such as Wollersheim and Armstrong. It stated:

> "To illustrate, centuries ago the inquisition was one of the core religious practices of the Christian religion in Europe. This religious practice involved torture and execution of heretics and miscreants. [Citation.] Yet should any church seek to resurrect the inquisition in this country under a claim of free religious expression, can anyone doubt the constitutional authority of an American government to halt the torture and executions? And can anyone seriously question the right of the victims of our hypothetical modern day inquisition to sue their tormentors for any injuries - physical or psychological - they sustained?
>
> We do not mean to suggest Scientology's retributive

(continued...)

The gravamen of the complaint in Wollersheim II is that the Judge Ronald Swearinger, the trial judge in Wollersheim I, was biased against Scientology because he believed, during the trial of Wollersheim I, that Scientology had killed his dog and otherwise acted against him. (Greene Decl., Ex. C - Complaint in Wollersheim II.)

For the purposes of the instant application, the only salient point is that in Wollersheim II, Scientology sued Wollersheim. Therefore, any assistance provided by Armstrong to Wollersheim in Wollersheim II is outside the scope of the Sohigian Injunction.

D. Armstrong's Assistance In Wollersheim II

On June 21, 1993, Wollersheim filed his Amended Memorandum of Points and Authorities in Support of Defendant's Special Motion to Strike authorized by Code of Civil Procedure section 425.16. [2]

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[1] (...continued)

> program . . . represented a full-scale modern day 'inquisition.' Nevertheless, there are some parallels in purpose and effect. 'Fair game' like the 'inquisition' targeted 'heretics' who threatened the dogma and institutional integrity of the mother church. Once 'proven' to be a 'heretic,' an individual was to be neutralized. In medieval times neutralization often meant incarceration, torture and death. [Citations.] As described in the evidence at this trial the 'fair game' policy neutralized the 'heretic' by stripping this person of his or her economic, political and psychological power."

Id. 212 Cal.App.3d at 888.

[2] Recognizing the potential chilling effect of lawsuits brought primarily for the purpose of curbing the valid exercise of the constitutional rights of petition, or of free speech, the California Legislature last year added section 425.16 to the Code of Civil Procedure. The purpose of the legislation is set forth (continued...)

(Greene Decl., Ex. D.)

Submitted in support of Wollersheim's Special Motion to Strike was the Declaration of Gerald Armstrong (Greene Decl. Ex. E) for which Scientology is asking this court to issue the OSC. By means of this declaration, Gerald Armstrong authenticated Scientology's written policy which directs the use of litigation to harass its critics and opponents. The policy states, in part:

> The purpose of the lawsuit is to harass and discourage rather than to win. [¶] The law can be used very easily to harass, and enough harassment on somebody who is simply on the thin edge anyway . . . will generally be sufficient to cause his professional decease. If possible, of course, ruin him utterly.

(Greene Decl., Ex. D at p. 10, fn 14.)

It is high irony that the very policy that Armstrong exposed in the declaration that he submitted in support of defendant Wollersheim's effort in Wollersheim II to vindicate his First Amendment rights, is now being used in this Court in an attempt to chill and harass Armstrong's own First Amendment rights to petition and free speech. What is worse is that Scientology is shamelessly lying when it makes the claim that Armstrong's declaration transgresses the Sohigian injunction because, clearly, it does not.

---

[2] (...continued) in its first subsection: "The Legislature finds that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of free speech and petition for redress of grievances. The Legislature also finds and declares that it is in the public interest to encourage continued participation in matters of public significance and that this participation should not be chilled through abuse of the judicial process." (§ 425.16 (a).)

E. Armstrong Gave Scientology Notice That The OSC Is Without Merit And Frivolous

On Friday, July 23, 1993, Gerald Armstrong's counsel telecopied Laurie J. Bartilson and demanded that she not proceed with the instant OSC and explained why it was without merit. The letter stated, in full:

> In light of the fact that the injunction you claim my client to have violated does not prohibit Mr. Armstrong from providing declarations to private litigant defendants, and in light of the fact that your organization sued Mr. Wollersheim and Mr. Armstrong's perceived injunctional transgression is to have executed a declaration in support of defendant Wollersheim's motion to dismiss your suppressive litigation against him, any OSC that you seek on these grounds is without merit and frivolous.
>
> We will oppose your meritless OSC and seek sanctions for having to again deal with your spurious efforts at using litigation as a tool of repression.

(Greene Decl., Ex F.)

Prior to the commencement of the weekend, Scientology refused to provide its OSC application to Armstrong's counsel. (Greene Decl. Exs. G, H.) Indeed, Armstrong provided his opposition to Scientology even before Scientology served its moving papers on him. (Greene Decl. at ¶ 10.)

III. ARMSTRONG HAS NOT VIOLATED THE TERMS OF THE INJUNCTION

A. Armstrong's June 4, 1993, Declaration Does Not Fall Within The Scope Of Conduct Prohibited By The Sohigian Injunction

Contempt committed out of the presence of the court, as is alleged here, is an indirect contempt. As such it falls within the scope of Code of Civil Procedure section 1209 (5) which prohibits "disobedience of any lawful judgment, order, or process of such court." Since the injunction prohibits Armstrong only from voluntarily providing assistance to private litigant plaintiffs (i.e. those "intending to make, intending to press, intending to arbitrate, or intending to litigate a claim against the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986 regarding such claim or regarding pressing, arbitrating, or litigating it"), and since in Wollersheim II, Mr. Wollersheim is a defendant, Armstrong's declaration falls outside the scope of the injunction. Thus, Armstrong is guilty of neither transgression in spirit, nor violation in fact.

B. Armstrong's Declaration Is Protected By The Litigant's Privilege

The litigation privilege is derived from Civil Code section 47 (2). It states that a "privileged communication or broadcast is one made -[¶] 2. In any ... (2) judicial proceeding ..." In Silberg v. Anderson (1990) 50 Cal.3d 205, 266 Cal.Rptr. 638, Justice Kaufman stated that the litigants privilege is an essential prophylactic ingredient required to ward off corruption in litigation. He said:

> The principal purpose of section 47(2) is to afford litigants and witnesses [citation omitted] the utmost freedom of access to the courts without fear of being harassed subsequently by derivative tort [or contempt] actions. [citations omitted.]
>
> Section 47(2) promotes effectiveness of judicial proceedings by encouraging "open channels of communication and the presentation of evidence" in

> judicial proceedings. [citations omitted.] A further purpose of the privilege "is to assure utmost freedom of communication between citizens and public authorities whose responsibility is to investigate and remedy wrongdoing." [citations omitted.] Such open communication is "a fundamental adjunct to the right of access to judicial and quasi-judicial proceedings." [citation omitted.] Since the "external threat of liability is destructive of this fundamental right and inconsistent with the effective administration of justice" (citation omitted), courts have applied the privilege to eliminate the threat of liability for communications made during all kinds of truth-seeking proceedings: judicial, quasi-judicial, legislative and other official proceedings. . . Thus, witnesses should be free from the fear of protracted and costly lawsuits which otherwise might cause them to distort their testimony or refuse to testify altogether. [citations omitted]"

(Id. 50 Cal.3d at pp. 213-14.)

The privilege is absolute in nature. (Id. at p. 215) Therefore, any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; (4) that has some connection or logical relation to the action is completely privileged. (Id. at p. 212.) Armstrong's declaration was made in a judicial proceeding as a witness. His declaration was submitted to achieve the object of the litigation, specifically, to obtain an order striking Scientology's complaint in Wollersheim II as a violation of C.C.P. § 425.16. Armstrong's personal knowledge of Scientology's use of the legal system as a tool of harassment, ruin, and destruction has a logical connection to the resolution of Wollersheim II. Therefore, the Application for an Order to Show Cause falls within the scope of the litigant's privilege and on that basis should be denied as well.

IV. MONETARY SANCTIONS SHOULD BE AWARDED AGAINST THE CHURCH OF SCIENTOLOGY INTERNATIONAL AND AGAINST BOWLES AND MOXON AND LAURIE J. BARTILSON

Pursuant to Code of Civil procedure section 128.3 the court has the power to order counsel and parties to pay the reasonable expenses, including attorney's fees, incurred by the other party "as a result of bad-faith actions or tactics, which are frivolous..." Frivolous means (a) "totally and completely without merit" or (b) "for the sole purpose of harassing and opposing party." (C.C.P. § 128.5 (b)(2).)

Upon reading the Sohigian injunction, any reasonable attorney would conclude that the terms of the injunction telling Armstrong not to voluntarily assist litigants adverse to Scientology was limited to private litigant plaintiffs only. (Karawasky v. Zachay (1983) 146 Cal.App.3d 679.) The language of the injunction refers only to those bringing a claim against Scientology. Scientology brought a claim against Lawrence Wollersheim. Therefore, Armstrong's participation in Wollersheim II as a witness is beyond the injunction's scope. This renders the OSC application patently devoid of all merit.

In opposing the OSC Armstrong's counsel expended 4 hours in drafting the papers. The fees said counsel charges in such litigation are calculated at the rate of $200.00 per hour. Paralegal time, valued at $55.00 per hour, required 8 hours to get the document to Los Angeles Superior Court in time to present them to the Court, and 3 hours for document assembly for $605.00. Copy costs total $106.25 for 427 copies at $.25 per copy and 29 fax sheets at 2.00 per sheet. Therefore, the total fees and costs incurred in opposing the application are $1,569.75.

V. **CONCLUSION**

Gerald Armstrong respectfully submits that Scientology's application for an Order to Show Cause re Contempt should be rejected. The injunction Scientology accuses Armstrong of violating does not prohibit him from voluntarily submitting declarations in support of private litigant defendants, particularly when such a defendant is the subject of Scientology's engine of legal destruction. Moreover, Armstrong's participation is protected by the absolute litigant's privilege. Therefore, the application should be soundly rejected, and fees and costs charged to Scientology.

DATED: July 25, 1993

By:
FORD GREENE and PAUL MORANTZ
Attorneys for Defendant
GERALD ARMSTRONG

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: (1) DEFENDANT ARMSTRONG'S MEMORANDUM IN OPPOSITION TO APPLICATION FOR AN ORDER TO SHOW CAUSE RE CONTEMPT; REQUEST FOR MONETARY SANCTIONS; (2) DEFENDANT ARMSTRONG'S MEMORANDUM IN OPPOSITION TO APPLICATION FOR AN ORDER TO SHOW CAUSE RE CONTEMPT; REQUEST FOR MONETARY SANCTIONS.

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew Wilson, Esquire
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

LAURIE J. BARTILSON, ESQ.
Bowles & Moxon By Fax
6255 Sunset Boulevard, Suite 2000
Los Angeles, California 90028

PAUL MORANTZ, ESQ.
P.O. Box 511
Pacific Palisades, CA 90272

[x] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[ ] (Personal) I caused said papers to be personally service on the office of opposing counsel.

[x] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: July 25, 1993

DEPT. ONE

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: August 27, 1993

Honorable	GARY KLAUSNER	, JUDGE	R. CYGER	, Deputy Clerk
	R. VALENCIA	, Deputy Sheriff	M. GARCIA	, Asst. Clerk
	R. REED	, Court Attendant	NONE	, ERM

BC 052395

(Parties and Counsel checked if present)

CHURCH OF SCIENTOLOGY

VS.

GERALD ARMSTRONG-ET AL.

Counsel For Plaintiff

(NO APPEARANCES)

Counsel For Defendant

related cases: BC 052395 and BC 084642

157680

NATURE OF PROCEEDINGS: MINUTE ORDER RE: RELATED CASES

The Court finds that cases **BC 052395 CHURCH OF SCIENTOLOGY VS. GERALD ARMSTRONG-ET AL.** and **BC 084642 CHRUCH OF SCIENTOLOGY VS. GERALD ARMSTONG-ET AL.** are related cases within the meaning of Los Angeles Superior Court Local Rule 1303.6. **BC 052395 is the lead case.** For good cause shown, said cases are assigned to **Judge David Horowitz** for all purposes pursuant to Local Rule 1303.6. This order is without prejudice to the parties making a motion to consolidate in **Department 30.**

All hearings in cases other than the lead case are vacated.

The moving party is ordered to serve notice of this order (including hearings vacated, if necessary) by mail forthwith on all interested parties within ten (10) days of the receipt of this minute order. A copy of this minute order is sent via U.S. Mail in an envelope addressed as follows:

Wilson, Ryan & Campilongo
Andrew H. Wilson
235 Montgomery St., Suite 450
San Francisco, CA 94104

-NO LEGAL FILE-

Minutes Entered: August 27, 1993

Department One

J12 4e11

1800

HUB LAW OFFICES
Ford Greene, Esquire
California State Bar No. 107601
711 Sir Francis Drake Boulevard
San Anselmo, California 94960-1949
Telephone: (415) 258-0360

PAUL MORANTZ, ESQ.
P.O. Box 545
Pacific Palisades, CA 90272
(310) 459-4745

Attorney for Defendant
GERALD ARMSTRONG

FILED
LOS ANGELES SUPERIOR COURT
SEP 07 1993
JAMES H. DEMPSEY, CLERK
BY INNA R. MATTHEWS, DEPUTY

FILED
NOV 16 1994
HOWARD HANSON
MARIN COUNTY CLERK
BY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

157680

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation; Plaintiffs, vs. GERALD ARMSTRONG; DOES 1 through 25, inclusive, Defendants.	No. **BC 052395** **DECLARATION OF FORD GREENE IN OPPOSITION TO ORDER TO SHOW CAUSE RE CONTEMPT; REQUEST FOR MONETARY SANCTIONS** Date: September 14, 19932 Time: 9:30 a.m. Dept: 86 Trial Date: Stayed Discovery Cut Off: Stayed Motion Cut Off: Stayed

FORD GREENE declares:

1. I am an attorney licensed to practice law in the Courts of the State of California and am the attorney of record for Gerald Armstrong, defendant herein.

2. Attached hereto and incorporated herein by reference as though fully set forth is Exhibit A, a true and correct copy of a

ORIGINAL

letter dated July 23, 1993, from Laurie J. Bartilson to Ford Greene.

3. Attached hereto and incorporated herein by reference as though fully set forth is Exhibit B, a true and correct copy of the preliminary injunction issued in this case by the Honorable M. Sohigian on May 28, 1992.

4. Attached hereto and incorporated herein by reference as though fully set forth is Exhibit C, a true and correct copy of the Complaint to Set Aside Judgment and for Equitable Relief in Church of Scientology of California v. Larry Wollersheim, LASC No. BC 074815 ("Wollersheim II").

5. Attached hereto and incorporated herein by reference as though fully set forth is Exhibit D, a true and correct copy of the Amended Memorandum of Points and Authorities in Support of Defendant's Special Motion to Strike filed June 21, 1993, in Wollersheim II.

6. Attached hereto and incorporated herein by reference as though fully set forth is Exhibit E, a true and correct copy of Declaration of Gerald Armstrong dated June 4, 1993, filed as Exhibit 6 in support of the Amended Memorandum of Points and Authorities in Support of Defendant's Special Motion to Strike filed June 21, 1993, in Wollersheim II.

7. Attached hereto and incorporated herein by reference as though fully set forth is Exhibit F, a true and correct copy of the Declaration of the Honorable James M. Ideman, executed June 17, 1993 in Religious Technology Center, Petitioner v. US District Court, Respondent, David Mayo, Real Part in Interest, No. 93-70281 in the 9th Cir. Ct. of Appeals.

8. Attached hereto and incorporated herein by reference as though fully set forth is Exhibit G, a true and correct copy of a letter dated July 23, 1993, from Ford Greene to Laurie J. Bartilson.

9. Attached hereto and incorporated herein by reference as though fully set forth is Exhibit H, a true and correct copy of a letter dated July 23, 1993, from Gerald Armstrong on behalf of Ford Greene to Laurie J. Bartilson.

10. Attached hereto and incorporated herein by reference as though fully set forth is Exhibit I, a true and correct copy of a letter dated July 23, 1993, from Laurie J. Bartilson to Ford Greene.

11. Attached hereto and incorporated herein by reference as though fully set forth is Exhibit J, a true and correct copy of a letter dated July 30, 1993, from Ford Greene to Laurie J. Bartilson.

12. On Sunday, July 25, 1993, I served by fax a copy of Defendant Armstrong's Memorandum In Opposition To Application For An Order To Show Cause Re Contempt; Request For Monetary Sanctions to Laurie J. Bartilson, counsel for plaintiff.

13. I have never received any response to my letter identified above as Exhibit J.

14. Attached hereto and incorporated herein by reference as though fully set forth is Exhibit K, a true and correct copy of an excerpt of Respondent's Brief, filed April 20, 1993, in Case No. B 069450 in the Second District Court of Appeal, in Armstrong's appeal of the Sohigian injunction herein.

15. In cult-related litigation, such as that at bar, I bill

my time at the rate of $200.00 per hour. It has taken me six hours to draft the memorandum and declaration that are to be submitted in opposition to Scientology's Application for an Order to Show Cause Why Gerald Armstrong Should Not Be Held In Contempt. In order for this opposition to presented to the Court, I will be required to spend four hours traveling to and from my office in Marin County to Los Angeles. I anticipate that three hours of trial time will be expended litigating the order to show cause. I value the time of my paralegal at $55.00 per hour. Four paralegal hours were expended on pulling, copying and assembling documents. 854 copies were made at the cost of $.25 per copy and 29 fax sheets at $2.00 per sheet. Therefore, the total fees and costs incurred in opposing the application are $3,081.50.

Under penalty of perjury pursuant to the laws of the State of California I hereby declare that the foregoing is true and correct according to my first-hand knowledge, except those matters stated to be on information and belief, and as to those matters, I believe them to be true.

Executed on September 4, 1993 at San Anselmo, California.

FORD GREENE

BOWLES & MOXON
ATTORNEYS AT LAW
6255 SUNSET BOULEVARD
SUITE 2000
HOLLYWOOD, CALIFORNIA 90028

(213) 953-3360
TELECOPIER (213) 953-3351

TIMOTHY BOWLES *
KENDRICK L. MOXON ±
LAURIE J. BARTILSON †
HELENA K. KOBRIN ‡

PETER M. JACOBS
RANDALL A. SPENCER §
ROBERT A. WIENER #
LESLIE T.W. SOASH
AVA MARIE SANDLIN

OF COUNSEL
JEANNE M. GAVIGAN
MARCELLO M. DI MAURO
KAREN L. BROWN
KAREN D. HOLLY

* ALSO ADMITTED IN OREGON
± ALSO ADMITTED IN THE DISTRICT OF COLUMBIA
† ALSO ADMITTED IN MASSACHUSETTS
‡ ALSO ADMITTED IN FLORIDA
§ ALSO ADMITTED IN ILLINOIS
# ALSO ADMITTED IN OKLAHOMA

RECEIVED
JUL 26 1993
HUB LAW OFFICES

July 23, 1993

BY TELEFAX AND U.S. MAIL

Ford Greene
711 Sir Francis Drake Blvd.
San Anselmo, California 94960-1949

Re: Church of Scientology International v. Gerald Armstrong

Dear Mr. Greene:

Please take notice that on Monday, July 26, 1993, at 8:30 a.m., plaintiff Church of Scientology International will appear in Department 86 of the Los Angeles Superior Court, and request that an order issue, pursuant to Code of Civil Procedure Section 1212, directing Gerald Armstrong to show cause why he should not be held in contempt of court and sanctioned. Plaintiff intends to base its request on the declaration, dated June 4, 1993, which Armstrong provided to Larry Wollersheim and his attorneys in direct contravention of the injunction issued in this case by Judge Sohigian on May 28, 1992.

Sincerely,

BOWLES & MOXON

Laurie J. Bartilson

LJB:mfh

Enc.

cc: Paul Morantz **BY TELEFAX AND U.S. MAIL**
cc: Andrew H. Wilson **BY TELEFAX AND U.S. MAIL**

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: May 28, 1992
Honorable Ronald M. Sohigian, Judge
1

M. Cervantes, Deputy Clerk
None (E.R.M.)

(Parties and Counsel checked if present)

BC 052395

Church of Scientology, International

vs.

Gerald Armstrong, et al.

Counsel For Plaintiff

Counsel For Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

In this matter heretofore taken under submission on May 27, 1992, the court now makes the following ruling.

1 Plaintiff's legal remedies are inadequate insofar as the scope of relief ordered below is concerned, but not otherwise. CCP 526(4) and (5).

2 The threatened acts which are restrained by the order referred to below, but only those threatened acts, would do irreparable harm to plaintiff which could not be compensated by monetary damages. CCP 526(2).

3 On the basis of the instant record, there is a reasonable probability that plaintiff will prevail after trial of this case in the respects restrained by this order. CCP 526(1); cf., San Francisco Newspaper Printing Co., Inc. vs. Superior Court (Miller) (1985) 170 Cal. App. 3d 438.

4 Plaintiff is likely to suffer greater injury from denial of the preliminary injunction the terms of which are set out below than the injury which defendant is likely to suffer if it is granted. See Robbins vs. Superior Court (County of Sacramento) (1985) 38 Cal. 3d 199, 206.

5 The granting of a preliminary injunction in the terms set out below will preserve the status quo pending trial.

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: May 28, 1992 Honorable Ronald M. Sohigian, Judge 1a	M. Cervantes, Deputy Clerk None (E.R.M.)

BC 052395 (Parties and Counsel checked if present)

Church of Scientology, International — Counsel For Plaintiff

vs.

Gerald Armstrong, et al. — Counsel For Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

6 Application for preliminary injunction is granted in part, in the following respects only.

Defendant Gerald Armstrong, his agents, and persons acting in concert or conspiracy with him (excluding attorneys at law who are not said defendant's agents or retained by him) are restrained and enjoined during the pendency of this suit pending further order of court from doing directly or indirectly any of the following:

> Voluntarily assisting any person (not a governmental organ or entity) intending to make, intending to press, intending to arbitrate, or intending to litigate a claim against the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986 regarding such claim or regarding pressing, arbitrating, or litigating it.
>
> Voluntarily assisting any person (not a governmental organ or entity) arbitrating or litigating a claim against the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986.

The court does not intend by the foregoing to prohibit defendant Armstrong from: (a) being reasonably available for the service of subpoenas on him; (b) accepting service of subpoenas on him without physical resistance, obstructive tactics, or flight; (c) testifying fully and fairly in response to properly put questions either in deposition, at trial, or in other legal or arbitration proceedings; (d) properly reporting or disclosing to authorities criminal conduct of the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986; or (e) engaging in gainful employment rendering clerical or paralegal services not contrary to the terms and conditions of this order.

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: May 28, 1992
Honorable Ronald M. Sohigian, Judge
1b

M. Cervantes, Deputy Clerk
None (E.R.M.)

(Parties and Counsel checked if present)

BC 052395

Church of Scientology, International
vs.
Gerald Armstrong, et al.

Counsel For Plaintiff

Counsel For Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

The application for preliminary injunction is otherwise denied.

7 The restraints referred to in sec. 6, above, will become effective upon plaintiff's posting an undertaking in the sum of $70,000 pursuant to CCP 529(a) by 12:00 noon on June 5, 1992.

8 The restraints referred to in sec. 6, above, properly balance and accommodate the policies inherent in: (a) the protectable interests of the parties to this suit; (b) the protectable interests of the public at large; (c) the goal of attaining full and impartial justice through legitimate and properly informed civil and criminal judicial proceedings and arbitrations; (d) the gravity of interest involved in what the record demonstrates defendant might communicate in derogation of the contractual language; and (e) the reasonable interpretation of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986. The fair interpretation of all the cases cited by the parties indicates that this is the correct decisional process. The law appropriately favors settlement agreements. Obviously, one limitation on freedom of contract is "public policy"; in determining what the scope of the public policy limitation on the parties' rights to enforcement of their agreement in the specific factual context of this case, the court has weighed the factors referred to in the first sentence of this section. Litigants have a substantial range of contractual freedom, even to the extent of agreeing not to assert or exercise rights which they might otherwise have. The instant record shows that plaintiff was substantially compensated as an aspect of the agreement, and does not persuasively support defendant's claim of duress or that the issues involved in this preliminary injunction proceeding were precluded by any prior decision.

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: May 28, 1992
Honorable Ronald M. Sohigian, Judge
1c

M. Cervantes, Deputy Clerk
None (E.R.M.)

(Parties and Counsel checked if present)

BC 052395

Church of Scientology, International

vs.

Gerald Armstrong, et al.

Counsel For Plaintiff

Counsel For Defendant

No Appearances

NATURE OF PROCEEDINGS: RULING ON MATTER TAKEN UNDER SUBMISSION ON MAY 27, 1992

9 The court does not dispositively decide the underlying merits of the case except for this preliminary determination. CCP 526(1); Baypoint Mortgage Corp. vs. Crest Premium Real Estate etc. Trust (1985) 168 Cal. App. 3d 818, 823.

10 Plaintiff is ordered give written notice by mail by June 5, 1992, including in that written notice a statement regarding whether plaintiff has or has not posted the undertaking referred to in sec. 7, above, and attaching to that written notice evidence showing that the undertaking has been posted if that is the fact.

DATED: May 28, 1992.

RONALD M. SOHIGIAN

RONALD M. SOHIGIAN
Judge of the Superior Court

A copy of this minute order is sent to counsel via United States mail this date.

Kendrick L. Moxon
BOWLES & MOXON
6255 Sunset Blvd.
Suite 2000
Hollywood, CA 90028-7421
(213) 661-4030

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY OF CALIFORNIA

J. KAKITA?

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES FILED 2/16/93

CHURCH OF SCIENTOLOGY OF CALIFORNIA, a California non-profit religious corporation,

Plaintiff,

vs.

LARRY WOLLERSHEIM,

Defendant.

CASE NO. BC 074875

COMPLAINT TO SET ASIDE JUDGMENT AND FOR EQUITABLE RELIEF

Plaintiff Church of Scientology of California ("the Church") alleges as follows:

GENERAL ALLEGATIONS

1. This is an action for equitable relief from a judgment rendered in this Court on July 22, 1986, in an action entitled Larry Wollersheim v. Church of Scientology of California, Case No. C 332 027 (the "Prior Action"). A true and correct copy of that judgment is annexed as Exhibit A. The Prior Action resulted in the entry of a judgment against the Church for, *inter alia*, punitive damages which exceeded the Church's proven net worth by more than $14,000,000. Evidence newly discovered, as set forth in detail in paragraphs 9 - 20, *infra*, reveals that the verdict

was the result of passion and prejudice not merely of the jury, but of the sitting judge; that the judge was biased against the Church during the trial of the Prior Action because of beliefs that had no basis in fact, and came solely from extrajudicial sources; that the judge's prejudice became the source of the jurors' prejudice and bias; and that those prejudices were deliberately concealed from the Church and its counsel both during the trial proceedings and during post-trial proceedings in which the Church's attempts to inquire into the bias of judge and jury were uniformly thwarted. Because the trial court, due to his bias and prejudice, lacked jurisdiction over the trial of the Prior Action, the Church seeks equitable relief from the unjust judgment.

2. The Church is, and at all times herein mentioned was, a not for profit religious corporation organized and existing under the laws of the State of California with its principal offices at 1404 North Catalina, Los Angeles, California 90027.

3. Defendant Larry Wollersheim is an individual whose current residence is not known to the Church, but whose current mail drop, upon information and belief, is P.O. Box 10910, Aspen, Colorado 81612.

4. Jurisdiction and venue are proper in this Court because this is an action for equitable relief from a judgment entered in the Prior Action. That judgment was modified by the California Court of Appeal in an opinion reported at 212 Cal.App.3d 872, 260 Cal.Rptr. 331 (1989). The Court of Appeal's opinion was then vacated by the United States Supreme Court in a proceeding reported at 111 S.Ct. 1298 (1991). Judgment was again entered by

the California Court of Appeal on March 20, 1992, [Exhibit B] and modified by that Court on April 20, 1992 [Exhibit C]. On July 23, 1992, the California Supreme Court granted the Church's petition for review. The case is being held pending decision by the Supreme Court of the United States in TXO Production Corp. v. Alliance Resources Corp., et al., No. 92-479 and pending a determination by the Supreme Court of California in Gourley v. State Farm Mutual Automobile Ins. Co. (S014133) and MGW, Inc. v. Fredericks Development Corp. et al. (S015966).

FIRST CAUSE OF ACTION

FOR EQUITABLE RELIEF FROM JUDGMENT

(Against Defendant Wollersheim)

5. This action seeks an order from the Court declaring the judgment in the Prior Action null and void in its entirety. The judgment rendered in the Prior Action was, and at all times has been, and now is void because the trial court lacked jurisdiction to render judgment in the Prior Action.

6. The Church is informed and believes that the judge in the Prior Action, the Honorable Ronald Swearinger, was disqualified under California case law and applicable provisions of the California Code of Civil Procedure, including C.C.P. §§ 170.1 and 170.6. Newly-discovered evidence, as hereinafter alleged, discloses that the judge entertained -- but failed to disclose that he entertained -- unfavorable beliefs and a biased condition of mind toward the Church during the trial of the Prior Action. The unfavorable beliefs had no basis in fact or evidence, nor did they derive from anything other than extrajudicial sources. Because of these unfounded beliefs and

bias, Judge Swearinger was disqualified throughout the pendency of the Prior Action, and lacked jurisdiction to preside over the trial, or to enter judgment.

7. During post-trial proceedings following the Prior Action, interviews with jurors conducted by the Church's attorneys revealed that the jurors "believed" that they were being followed by members of the Church of Scientology. One of the jurors, Terri Reuter, stated that the jury had been told by "unnamed court personnel," whom she refused to identify, that during the trial Judge Swearinger's tires had been slashed, and that his dog had been found dead. She said that the jurors attributed these actions to unknown and unnamed members of the Church of Scientology. None of the jurors, however, would volunteer further information about these events. No members of any Church of Scientology had, in fact, followed the jurors, slashed any tires, or done anything at all to Judge Swearinger's dog. The Church was aware, however, that Wollersheim's counsel, Charles O'Reilly, had hired multiple private investigators during the course of the Prior Action, and Church counsel suspected that one or more of these investigators were responsible for "dirty tricks" designed to implicate the Church, and prejudice the jury.

8. After the juror interviews, Church attorneys sought to investigate the bias that obviously pervaded the jury and infected its verdict, seeking the source of these unfounded accusations, which had never been made in the open courtroom during the trial itself. Church counsel raised with the Court the jury bias which had been learned of in post-trial interviews, including the statements made by Reuter, and made a request to

Judge Swearinger to be allowed discovery into the jurors in order to establish the extent and source of the taint. Wollersheim's counsel vigorously opposed such an investigation and Judge Swearinger refused to allow the discovery. The source of the jury's bias thus remained a mystery for five years.

9. Finally, in an interview with William W. Horne, a reporter employed by the American Lawyer magazine which took place in 1992, Judge Swearinger revealed that he maintained a condition of mind of unfavorable bias against the Church during the trial of the Prior Action. According to Horne, Judge Swearinger stated that his dog had drowned in the family swimming pool during the trial of the Prior Action, and that the judge believed that he had been followed when in his car throughout the trial. The judge informed Horne that, while he was in possession of no evidence to corroborate the suspicions he harbored, he nonetheless felt that members of the Church of Scientology were responsible for such actions.

10. The judge's "suspicions" had no basis in fact. No member of any Church of Scientology did anything to harass or follow Judge Swearinger during the Prior Action, nor did any member of any Church of Scientology have anything to do with the death of Judge Swearinger's dog.

11. During an interview with the Church's attorneys Eric M. Lieberman and Jonathan Lubell on March 19, 1992, Horne revealed Judge Swearinger's statements as set forth in paragraph 9, supra. For the first time, the Church and its attorneys suspected that the source of infection of the jury was the judge himself.

12. Horne provided further details concerning Judge

Swearinger's statements in an interview with the Church's attorney, Michael L. Hertzberg, in New York City on March 23, 1992. Horne stated that Judge Swearinger related to Horne that the judge's veterinarian had told the judge that the dog was old and had died of a heart attack, yet Judge Swearinger still felt that the dog had fallen or been pushed into the pool. Horne further stated that the judge had said that he felt the Church somehow had responsibility for the dog's death.

13. Horne also told Hertzberg that Judge Swearinger claimed he had been followed "a few times" in his car during the trial of the Prior Action and had assumed that the Church of Scientology was responsible for these actions.

14. In the July/August 1992 issue of American Lawyer, Horne published an article which quotes Judge Swearinger as saying:

> "I was followed [at various times] throughout the trial . . . and during motions for a new trial . . . . All kinds of things were done to intimidate me, and there were a number of unusual occurrences during that trial. My car tires were slashed. My collie drowned in my pool. But there was nothing overtly threatening, and I didn't pay any attention to the funny stuff."

15. During the pendency of the Prior Action, Judge Swearinger never mentioned these incidents to counsel for the Church nor revealed (to them) his concern or belief that Church personnel were responsible for acts of harassment against him. By withholding any mention of his concern, Judge Swearinger denied the Church the opportunity to remove his concerns or to

challenge him for cause.

16. The Church is informed, and therefore believes, that although Judge Swearinger did not divulge his state of mind to Church counsel, he did describe these incidents to court personnel during the trial of the Prior Action, and that court personnel, in turn, revealed them to the jurors, resulting in a jury as biased as the judge.

17. In April, 1992, during a chambers conference in a case unrelated to the Prior Action and to which neither Wollersheim nor the Church was a party, Judge Swearinger discussed the trial of the Prior Action with counsel in that case, one of whom was counsel for Wollersheim in the most recent Court of Appeal proceeding in the Prior Action. The Church is informed, and therefore believes, that Judge Swearinger stated to Wollersheim's appellate lawyer that he believed the award of damages in the Prior Action was excessive but that he had deliberately chosen to allow the excessive verdict to stand because of his displeasure with the Church and its trial counsel.

18. During the chambers conference, Judge Swearinger asked Wollersheim's appellate counsel to see if he could arrange with the Church's counsel for a certain official of the Church of Scientology to call Judge Swearinger. The judge also showed bias against the Church and its counsel through derogatory references to the Church's counsel. The judge referred to the Church's counsel, Earl Cooley, as Earl "Fooley," because Mr. Cooley had alleged that there had been tampering with the jury.

19. Wollersheim's appellate counsel relayed Judge Swearinger's remarks to one of the Church's counsel who, after

client consultation, called Judge Swearinger on behalf of the Church of Scientology official with whom Judge Swearinger had asked to speak. In that telephone conversation with Church counsel, Judge Swearinger repeated the substance of his discourse with Wollersheim's appellate counsel concerning his state of mind with respect to the jury verdict in the Prior Action. The judge stated that at the time of the post-trial motion he probably would have done what the Court of Appeal eventually did -- i.e., reduce the jury's damage award by 27.5 million dollars. He explained, however, that he did not do so because such an action would have given credibility to Mr. "Fooley's" charge that the jury was tainted. Now, five years later, it has finally been revealed that not only was Mr. Cooley correct about the jury taint, but that it was Judge Swearinger, himself, who was the source of the jury's taint and corruption.

20. Judge Swearinger's comments, made long after the trial of the Prior Action, revealed that he possessed, throughout the Prior Action, unfounded suspicions and unfavorable beliefs regarding the Church, none of which were disclosed during the pendency of the Prior Action. Moreover, those comments make clear that the judge improperly permitted entry of a judgment he knew to be outrageous, and the result of bias and prejudice, in order to conceal that he, himself, was the source of the jury's bias and prejudice.

21. Judge Swearinger's concealment, during the Prior Action, of his suspicions, bias and prejudice denied the Church any opportunity to address and alleviate Judge Swearinger's concerns, or to challenge him for cause, thus resulting in an

unfair trial and an unjust verdict. Further, Judge Swearinger's refusal during the post-trial stages of the Prior Action to permit discovery into the source of the jurors' bias and prejudice prevented the Church from discovering, other than by chance, that the judge was also the source of jury bias and taint.

22. The Church was recently apprised of all of the foregoing information regarding Judge Swearinger's state of mind during the Prior Action. Prior to this time such information was not available to the Church despite the Church's diligence. The Church is free from contributory fault in the entry of the previous judgment.

23. The Church will suffer irreparable harm and irreplaceable loss if the final judgment entered in the Prior Action is permitted to stand, and the Church has no adequate remedy at law.

WHEREFORE, the Church prays for judgment as follows:

1. That the judgment rendered against the Church in the Prior Action be declared null and void and of no further effect; and

2. For such other and further relief as the Court may deem just and proper.

DATED: February 16, 1993

Respectfully submitted,

BOWLES & MOXON

By: ______________________
Kendrick L. Moxon

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY OF
CALIFORNIA

VERIFICATION

I, James Morrow, am the President of the Church of Scientology California, the plaintiff in this action. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of February, 1993, at Los Angeles, California.

JAMES MORROW

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In Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF CALIFORNIA,

Plaintiff,

vs.

LARRY WOLLERSHEIM,

Defendant.

No. BC 074815

AMENDED MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S SPECIAL MOTION TO STRIKE

Date: July 2, 1993
Time: 9:00 a.m.
Dept: 14

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INTRODUCTION.

Plaintiff Church of Scientology of California ("Scientology") filed this action to set aside a $2.5 million judgment which was upheld by the District Court of Appeal, in Wollersheim v. Church of Scientology of California (1989) 212 Cal.App.3d 872, 260 Cal.Rptr. 331, and (1992) 3 Cal.App.4th 1290, 6 Cal.Rptr.2d 532, and which is currently pending before the California Supreme Court.[1]

This action was brought almost seven years after the trial verdict and eleven months after the allegedly "new evidence" upon which it is based came to the attention of Scientology's attorneys. It alleges improper conduct by trial judge Ronald Swearinger, but was conveniently filed shortly after Judge Swearinger died, so he can no longer defend himself. The action is untimely, improper, without merit, and filed to further harass defendant. Because it arises from defendant's exercise of his First Amendment right to petition the government (file a lawsuit), this action is subject to a special motion to strike under Code of Civil Procedure § 425.16,[2] which should be granted for the reasons set forth below.

I. THIS SPECIAL MOTION TO STRIKE IS AUTHORIZED BY § 425.16.

Recognizing the potential chilling effect of lawsuits brought primarily for the purpose of curbing the valid exercise of the constitutional rights of petition or freedom of speech,[3] the California Legislature last year added § 425.16 to the Code of Civil Procedure. Effective January 1, 1993, the section specifies that an action arising from a defendant's exercise of the constitutional right to petition the government shall be subject to a motion to strike unless the plaintiff can show a "probability" of success on the merits.[4]

---

[1] See discussion in footnote 13 below for a more detailed discussion of the appellate proceedings.

[2] Subsequent section references are to the Code of Civil Procedure, unless otherwise noted.

[3] The purpose of the legislation is set forth in its first subection: "The Legislature finds that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for redress of grievances. The Legislature also finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process." § 425.16(a).

Plaintiff's complaint against defendant falls squarely within § 425.16. The complaint seeks to set aside the judgment in the action entitled Larry Wollersheim v. Church of Scientology of California, Los Angeles Superior Court No. C 332 027 (the "Main Action"). The petition activity which is protected by this new statute includes "any written statement...made before a...judicial proceeding..." (§ 425.16(e).) This surely includes defendant Wollersheim's filing of a complaint in the Main Action. The complaint in this action arises from the defendant's exercise of his right to petition the government in one of its most fundamental forms, filing a lawsuit. Therefore, defendant brings this timely[5] special motion to strike.

II. THIS MOTION SHOULD BE GRANTED BECAUSE PLAINTIFF CAN NOT DEMONSTRATE A PROBABILITY THAT IT WILL PREVAIL ON ITS CLAIMS.

As demonstrated below, plaintiff cannot meet its burden of establishing a probability[6] that it will prevail on the merits of its claims, as required by § 425.16(b).[7] Therefore, this special motion to strike should be granted.[8]

---

[4] Section 425.16(b) provides, in pertinent part: "A cause of action arising from any act of that person in furtherance of the person's rigght of petition or free speech in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim."

[5] This special motion has been filed within 60 days of service of the complaint, as provided in § 425.16(f). See Plaintiff's proof of service, filed April 12, 1993.

[6] "Probable" is synonymous with "likely", and "probability" is synonymous with "likelihood". (Walbrook Insurance v. Liberty Mutual Insurance (1992) 5 Cal.App.4th 1445, 1461, 7 Cal.Rptr.2d 513; see also Black's Law Dictionary (Rev.4th Ed. 1968) p.1364 ["probability" means "likelihood"].) "A 'probable' consequence is one more likely to follow its cause than not..." (Bastian v. County of San Luis Obispo (1988) 199 Cal.App.3d 520, 533, 245 Cal.Rptr. 78.)

A. THIS COURT HAS NO JURISDICTION OVER THIS ACTION BECAUSE THE MAIN ACTION IS PENDING BEFORE THE CALIFORNIA SUPREME COURT.

The special motion to strike should also be granted because the Main Action is pending before the California Supreme Court, and this Court has no jurisdiction to hear this action. Plaintiff has acknowledged that the Main Action is currently pending before the California Supreme Court. (Complaint ¶ 4.)

C.C.P. § 916(a) provides in relevant part:

> "...the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby..."

Under this provision, a trial court has no power to vacate an appealed judgment while the appeal is pending. (Elsea v. Saberi (1992) 4 Cal.App.4th 625, 629, 5 Cal.Rptr.2d 742.)[9]

Furthermore, one department of the Superior Court cannot enjoin or otherwise interfere with the judicial act of another department in the same court. (Elsea v. Saberi, supra, 4 Cal.App.4th at 631.)

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[7] Unlike a demurrer, where the Court is limited to considering matters appearing on the face of the complaint (or matters of which judicial notice is taken), on a § 425.16 special motion to strike, the Court "shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based." § 425.16(b).

[8] In addition to the defects discussed in the following subsections, the complaint omits a necessary party -- the Superior Court of Los Angeles County, under § 389(a).

[9] Even if the complaint alleges extrinsic fraud (see discussion that the complaint alleges intrinsic fraud, in II-E below), the trial court does not have jurisdiction to vacate a judgment: "In effect the appeal removed from the jurisdiction of the Superior Court the subject-matter of the judgment. A motion to vacate for extrinsic fraud is embraced within the subject matter of a judgment appealed from." (Hurst v. Hazel Hurst Foundation for the Blind (1955) 134 Cal.App.2d 686, 689, 286 P.2d 53, 55, cited with approval in Beresh v. Sovereign Life Insurance Company of California (1979) 92 Cal.App.3d 547, 562, 155 Cal.Rptr. 74.)

B. THIS COURT HAS NO JURISDICTION OVER THIS ACTION BECAUSE IT IS MERELY A DISGUISED ATTEMPT TO BRING AN UNTIMELY MOTION FOR A NEW TRIAL.

The plaintiff's claims here, of judge and jury bias and misconduct, are claims that should have been raised in a motion for new trial in the Main Action. (§ 657 (1) & (2).) Such a motion must be filed within 15 days after notice of entry of judgment or 180 days after entry of judgment. (§ 659 (2).) The court has no jurisdiction to entergain an untimely motion for new trial. (Ehrler v. Ehrler (1981) 126 Cal.App.3d 147, 151, 178 Cal.Rptr. 642; Tri-County Elevator Co. v. Superior Court (1982) 135 Cal.App.3d 271, 277, 185 Cal.Rptr. 208).

Scientology, however, instead of raising these claims in a timely motion for new trial, has raised them in a separate action, almost seven years after the trial verdict in the Main Action, and has improperly attempted to depose Main Action jurors,[10] which is prohibited by law.[11] As discussed above, the Court has no jurisdiction to the relief sought here.

---

[10] Plaintiff noticed depositions in this action of Main Action jurors and other court personnel before defendant had even appeared in this action. Depositions of Main Action jurors Andre Anderson and Terri Reuter were originally noticed for May 18, 1993. Depositions of Main Action court clerk Cynthia Buter (misspelled as Butler) and bailiff Antoinette Carrasco were originally noticed for May 28, 1993. (See defendant's Application for Ex Parte Order to Stay All Discovery and the Declaration of Laurie J. Bartilson in Opposition, both filed May 27, 1993, and Exhibit 9 (plaintiff's deposition notices) filed herewith.)

In addition, Scientology attempted to take depositions of Main Action jurors and court personnel in two federal actions. (Amd. O'Reilly Decl., Ex. 1, ¶ 10.)

[11] In Linhart v. Nelson (1976) 18 Cal.3d 641, 644-645, 134 Cal.Rptr. 813, the Court held that in civil cases parties may not subpoena jurors or other witnesses to support a claim of jury misconduct: "To allow a disappointed litigant to call witnesses in support of his motion [for new trial] could effectively allow retrial of his case. ...[P]ermitting jurors or other witnesses to testify for one party would mean that opposing parties -- unaware of the proposed testimony -- would be obligated to subpoena all jurors and other witnesses in preparation for hearing. [¶] Moreover, permitting counsel for the losing party to interrogate unwilling trial jurors touches the integrity of our venerable jury process. First, once aware that after sitting through a lengthy trial he himself may be placed on trial, only the most courageous prospective juror will not seek excuse from service. Secondly, if jury deliberations are subject to compulsory disclosure, independent thought and debate will surely be stifled."

C. THIS ACTION IS BARRED BECAUSE IT IS UNTIMELY AND PLAINTIFF HAS NOT EXERCISED DUE DILIGENCE IN RAISING THESE CLAIMS.

A party bringing an equitable action such as this to set aside a judgment must "[h]ave acted with due diligence in discovering the facts constituting the basis for relief." (Restatement 2nd, Judgments, § 70(2)(a), quoted in 8 Witkin, Cal. Procedure (3d ed. 1985), Attack on Judgment in Trial Court, § 204, p. 604.) He must also show diligence in seeking relief after discovery of the facts. (Witkin, supra, § 218, p. 622.) Grounds for disqualification of a judge, such as those alleged here, must be "presented at the earliest practicable opportunity after discovery of the facts constituting the ground for disqualification." § 170.3(c)(1). Plaintiff did not exercise due diligence here, either in discovering the alleged new facts, or in bringing them to the attention of the Court.

The judgment in the Main Action, which plaintiff attacks in this action, was rendered on July 22, 1986. (Complaint ¶ 1.) In post-trial interviews with the jurors, plaintiff says its attorneys learned that some jurors believed that they were being followed by members of Scientology, and that one juror said that the jury had been told by court personnel that during the trial Judge Swearinger had been the subject of vandalism. (Id. ¶ 7.) Plaintiff unsuccessfully requested discovery regarding these matters in post-trial motions in the Main Action. (Id. ¶ 8.) There is no indication in the complaint that plaintiff did anything further regarding this matter until March 1992.

On March 19 and 23, 1992, Scientology says its attorneys conducted interviews with William Horne which led Scientology to believe that Judge Swearinger was biased against Scientology. (Id., pars. 11-13.) Yet plaintiff waited almost a full year, until after Judge Swearinger had died, to file this action.

Thus, plaintiff filed this action almost seven years after the underlying events, and almost eleven months after plaintiff claims to have received the "new evidence". This is not the earliest practicable opportunity or due diligence, and the granting of the relief requested would be seriously prejudicial to defendant Wollersheim, forcing on him a burden to litigate matters now more than seven years old. (See McCreadie v. Arques (1967) 248 Cal.App.2d 39, 47, 56 Cal.Rptr. 188.)

Further, the time has long since expired for the plaintiff to seek relief from the judgment of this Court under § 473. (See Church of Scientology of California v. Armstrong (1991) 232 Cal.App.3d 1060, 1069-70, 283 Cal.Rptr. 917.)

D. PLAINTIFF DOES NOT PLEAD AND CAN NOT SHOW THAT IT HAS A MERITORIOUS DEFENSE IN THE MAIN ACTION.

The relief sought by plaintiff in this action must also be denied because plaintiff does not plead, and can not show, that it has a meritorious defense:

> "A valid judgment will not be set aside merely because it was obtained by extrinsic fraud or mistake, in order to give the barren right of an adversary hearing. The plaintiff must plead and prove that he has a meritorious case, i.e., a good claim or defense which, if asserted in a new trial, would be likely to result in a judgment favorable to him."

(8 Witkin, Cal. Procedure, supra, § 216, p. 620, quoted in New York Higher Education Assistance Corporation v. Siegel (1979) 91 Cal.App.3d 684, 688-689, 154 Cal.Rptr. 200.)

The complaint in this action does not even allege that plaintiff has a meritorious case which would likely result in a favorable judgment in a new trial. Furthermore, upon weighing the entire trial court record, the First District Court of Appeal unanimously concluded that "there is ample evidence to support the jury's verdict on Wollersheim's claim for intentional infliction of emotional distress." (Wollersheim v. Church of Scientology, supra, 212 Cal.App.3d at 882.) This conclusion has remained undisturbed in the subsequent appellate litigation regarding the punitive damages issue. (See fn.13 below.)

E. PLAINTIFF'S COMPLAINT IS NOT SUFFICIENT TO SET ASIDE THE JUDGMENT BECAUSE IT ALLEGES AT MOST INTRINSIC FRAUD.

Plaintiff's complaint alleges intrinsic, not extrinsic, fraud. However, this is not grounds for an equitable action to set aside a judgment. As Witkin notes:

> "Ordinarily, if the aggrieved party is aware of the proceeding and is not prevented from appearing, any fraud is intrinsic and not a basis for equitable relief..." -- "If the aggrieved party had a reasonable opportunity to appear and litigate his claim or defense, fraud occurring in the course of the proceeding is not a ground for equitable relief. The theory is that these matters will ordinarily be exposed during the trial by diligence of the party and his counsel, and that the occasional unfortunate result of undiscovered perjury or other intrinsic fraud must be endured in the interest of stability of final judgments."

(8 Witkin, Cal Procedure, supra, § 207, p. 606; § 221, p. 625; Kulchar v. Kulchar (1969) 1 Cal.3d 467, 472-473, 82 Cal.Rptr. 489.)

Here, Scientology was not prevented from appearing and defending in the Main Action by any extrinsic fraud. Any fraud alleged is intrinsic and not grounds for the relief sought.

F. PLAINTIFF CAN NOT DEMONSTRATE A PROBABILITY THAT IT WILL PREVAIL ON ITS CLAIM IN THIS ACTION THAT JUDGE SWEARINGER SHOULD HAVE BEEN DISQUALIFIED.

Plaintiff's theory of this action seems to be that Judge Swearinger was biased against plaintiff and therefore should have been disqualified under §§ 170.1 and 170.6. (Complaint ¶ 6.) However, the facts alleged in the complaint do not state grounds for disqualification under § 170.1. Scientology had no claim against Judge Swearinger under § 170.6 because it had already used its § 170.6 claim to disqualify Judge Lopez in the Main Action. (Amd. O'Reilly Decl., Ex. 1, ¶ 6.) In any case, any such disqualification claim may only be reviewed by a timely petition for writ of mandate -- not by a subsequent independent action. (§ 170.3(d); People v. Hull (1991) 1 Cal.4th 266, 276, 2 Cal.Rptr.2d 526.) This requirement, not met here, prevents the "intolerable windfall" which Scientology seeks here:

> "...an 'intolerable windfall' would result if a challenging party were to fail to seek immediate review of an unsuccessful challenge, attempt to obtain a favorable judgment, and if that effort failed, take a 'second bite at the apple' by reasserting the

peremptory challenge on appeal."

(Andrisani v. Saugus Colony Limited (1992) 8 Cal.App.4th 517, 526, 10 Cal.Rptr.2d 444.)

G. PLAINTIFF CAN NOT DEMONSTRATE A PROBABILITY THAT IT CAN PROVE KEY FACTS WHICH IT ALLEGES IN ITS COMPLAINT.

The declarations presented by defendant in support of this motion indicate that key "facts" alleged in the complaint did not occur. Andre Anderson, the jury foreperson, who was present at all proceedings in front of the jury and throughout all the jury deliberations in the Main Action, states unequivocally that there was no reference to nor comment, by any juror or any other person in his present, about Judge Swearinger's tires being slashed, his dog dying, or that he was being followed, harassed or bothered by Scientology. Anderson Decl., Ex. 3. Antoinette Carrasco Saldana, one of the court bailiffs who was present during the trial of the Main Action, states unequivocally that during the trial she was not aware of any unfavorable beliefs or biases held by Judge Swearinger against Scientology, that Judge Swearinger never mentioned any strange occurrences for which the Judge suspected Scientology was or might be responsible, or that the Judge's tires were slashed; and that they have no knowledge of any statements regarding any of these matters to any member of the jury during the trial. (Saldana Decl., Ex. 5 .) After the verdict, Wollersheim's counsel met with all the jurors (except one alternate), had extensive discussions of the jury deliberations process, and there was no mention of any of these matters. (Amd. O'Reilly Decl., Ex. 1, ¶ 9.)

In contrast, the complaint (at ¶¶ 7, 9, 11-14, 17-19) cites only hearsay, and sometimes double or triple hearsay, in support of its claims that Judge Swearinger was biased against Scientology or that he somehow infected the jury.

H. THIS ACTION IS BARRED BY COLLATERAL ESTOPPEL BECAUSE THE CLAIMS MADE BY PLAINTIFF HERE WERE ALREADY RAISED BY PLAINTIFF AND REJECTED BY THE COURTS IN THE MAIN ACTION AND IN ANOTHER PROCEEDING.

In the course of the Main Action, Scientology launched unsuccessful attacks on Judge Ronald Swearinger, accusing him of bias and prejudice, particularly after the Judge ruled against Scientology on an important point. This included filing an action in approximately March of 1986, Church of Scientology v. Superior Court, USDC-CDCal, CV 86-1362 ER, against Judge Swearinger and the Los Angeles Superior Court, which was dismissed by Judge Edward Rafeedie.[12] It also included a formal motion in the Main Action to disqualify Judge Swearinger in early May 1986, which was denied. (Amd. O'Reilly Decl., Ex. 1, ¶ 8b.)

In its appeal of the trial court verdict, Scientology, in additional to its constitutional claims, raised "a broad spectrum of issues" which the Court of Appeal concluded had no merit. (Wollersheim v. Church of Scientology (1989) 212 Cal.App.3d 872, 880-881, 260 Cal.Rptr. 331, affirmed on these matters (1992) 3 Cal.App.4th 1290, 6 Cal.Rptr.2d 532 fn.1.)[13]

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[12] Defendant requests that the Court take judicial notice of the judicial proceedings and decisions of other courts referred to here and elsewhere in this memorandum, pursuant to Evidence Code §§ 451(a), 452(a), (c), (d), & (h), & 453. Copies of federal court decisions cited herein are included with the exhibits filed herewith.

[13] As the complaint notes (¶ 4), the U. S. Supreme Court vacated judgment in 1991, the Court of Appeal again entered judgment in 1992, and the California Supreme Court granted Scientology's petition for review in July 1992, holding the case pending decision by the U. S. Supreme Court in TXO Production Corp. v. Alliance Resources Corp. and by the California Supreme Court in Gourley v. State Farm Mutual Automobile Ins. Co. and MGW, Inc. v. Fredericks Development Corp. The July 1992 Court of Appeal decision, responding to the remand from the U. S. Supreme Court, addressed only issues regarding punitive damages and reaffirmed its previous decision as to all other matters. Wollersheim v. Church of Scientology of California (1992) 3 Cal.App.4th 1290, 6 Cal.Rptr. 2d 532, 534 fn.1. The cases the California Supreme Court is holding Wollersheim pending decision in all deal with punitive damages issues. See MGW, supra (7/9/92) 10 Cal.Rptr.2d 85, 832 P.2d 586; Gourley, supra (1991) 53 Cal.3d 121, 130, 3 Cal.Rptr.2d 666, granted 7/9/92; discussion re TXO, supra, in Daily Journal, US Supreme Court Pending Cases (5/27/93) 32-33. Thus, the courts have upheld the Wollersheim verdict as to all challenges except for the punitive damages issue.

Therefore, the claim by Scientology in this action that Judge Swearinger was biased against Scientology is barred by the doctrine of collateral estoppel, which prevents plaintiff from re-litigating issues which were or could have been raised. (Clemente v. State (1985) 40 Cal.3d 202, 222, 219 Cal.Rptr. 445.)

I. THIS ACTION IS PART OF PLAINTIFF'S LITIGATION STRATEGY TO USE THE COURTS TO HARASS ITS OPPONENTS.

Scientology embraces the use of litigation to harass its opponents. Its founder, L. Ron Hubbard, has described this practice as follows:

> The purpose of the suit is to harass and discourage rather than to win. [¶] The law can be used very easily to harass, and enough harassment on somebody who is simply on the thin edge anyway...will generally be sufficient to cause his professional decease. If possible, of course, ruin him utterly.[14]

Vicki Aznaran, who was one of the highest worldwide officials of Scientology, states in her declaration:

> Hubbard writings encourage Scientologists to pursue litigation purely for harassment without regard to the merits of a claim to cause enemies to fold. ... [¶] It is the stated policy and practice of Scientology to use the legal system to abuse and harass its enemies. This crude, fundamental directive of Scientology is no secret. The policy is to do anything and everything possible to harass the opposing litigant without regard to whether any particular motion or maneuver is appropriate or warranted by the facts or applicable law. That policy was followed in every legal case I was involved with or learned about while a member of the Sea Organization. The management of Scientology consistently expressed and demonstrated a complete disdain for the court system, viewing it as nothing more than a method to harass

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[14] From L. Ron Hubbard, The Technical Bulletins of Dianetics and Scientology, Volume II, p. 157. A copy of the relevant portion of this document is attached as Exhibit A to, and is authenticated by, Armstrong Decl., Ex. 6, ¶ 5.

Top Scientology official Jane Kember, in an internal Scientology document, explained that Scientology legal strategy in the U.S. is to use litigation as a financial club: "The button used in effecting settlement is purely financial. In other words, it is more costly to continue the legal action than to settle in some fashion. ... [¶] Therefore, it is imperative that legal US Dev-T his opponents and their lawyers with correspondence (a lawyer's letter costs approx $50), phone calls (time costs), interrogatories, depositions and whatever else legal can mock up. [¶] One of the bright spots of US legal is that even if you lose you don't pay your opponent for his lawyers fees." A copy of the document containing this statement is attached as Exhibit B to, and is authenticated by, Armstrong Decl., Ex. 6, ¶ 6. The phrase "Dev-T" is a term which Scientology uses to mean to cause someone to do unnecessary work. Id.

enemies.

Aznaran Decl., Ex. 7, 4:3-5, 5:3-14; see also Armstrong Decl., Ex. 6, ¶¶ 4, 8.

Scientology's use of litigation to harass opponents[15] is essentially an application of its "Fair Game" doctrine.[16] Under this doctrine, enemies of Scientology can be "deprived of property or injured by any means by any Scientologist" or "tricked, sued or lied to or destroyed".[17]

Defendant Wollersheim has himself been a victim of the Scientology litigation harassment strategy, of which this action is a part. This includes being subjected to a six-month trial in the Main Action, countless meritless motions by Scientology, and having to oppose at least six (ultimately unsuccessful) emergency writ petitions to the Court of Appeal (Amd. O'Reilly Decl., Ex. 1, ¶ 12.)[18]

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[15] In Church of Scientology of California v. Cazares (5 Cir. 1981) 638 F.2d 1272, 1290, the court ruled that the civil rights action filed by Scientology against the Mayor of Clearwater, Florida, "was frivolous, unreasonable and groundless. In Church of Scientology of California v. McLean (5 Cir. 1980) 615 F.2d 691, 693, Scientology moved to disqualify one of defendants' attorneys in a slander suit it had filed; the court found Scientology's position "not only without merit but frivolous." In Church of Scientology of California v. Siegelman (USDC, SDNY 1979) 475 F.Supp. 950, 951, the court referred to "the litigious Church of Scientology".

[16] The "Fair Game" doctrine is quoted and/or discussed in Church of Scientology of California v. Armstrong (1991) 232 Cal.App.3d 1060, 1067, 283 Cal.Rptr. 917; Wollersheim v. Church of Scientology of California (1989) 212 Cal.App.3d 872, 879-880; and Allard v. Church of Scientology of California (1976) 58 Cal.App.3d 439, 443 fn.1, 447 fn.4, 129 Cal.Rptr. 797; see also Armstrong Decl., Ex. 6, ¶¶ 4, 7-8; Aznaran Decl., Ex. 7, 2:10-5:14.

[17] Judge Paul G. Breckenridge, Jr., made the following observations about Scientology in Church of Scientology of California v. Armstrong, Los Angeles Superior Court, No. C 420153, which decision was affirmed in Church of Scientology of California v. Armstrong (1991) 232 Cal.App.3d 1060, 1074, 283 Cal.Rptr. 917: "In 1970 a police agency of the French Government conducted an investigation into Scientology and concluded, 'this sect, under the pretext of "freeing humans" is nothing in reality but a vast enterprise to extract the maximum amount of money from its adepts by (use of) pseudo-scientific theories, by (use of) "auditions" and "stage settings" (lit. to create a theatrical scene) pushed to extremes (a machine to detect lies, its own particular phraseology...), to estrange adepts from their families and to exercise a kind of blackmail against persons who do not wish to continue with this sect.' From the evidence presented to this court in 1984, at the very least, similar conclusions can be drawn. In addition to violating and abusing its own members civil rights, the organization over the years with its 'Fair Game' doctrine has harassed and abused those persons not in the Church whom it perceives as enemies. The organization clearly is schizophrenic and paranoid..." Memorandum of Intended Decision, June 20, 1984, p. 8, a copy of which is attached as Exhibit C to, and authenticated in ¶ 10 of, Armstrong Decl., Ex. 6. On July 20, 1984, the court issued an order deeming its memorandum of intended decision as its statement of decision.

While the Main Action was pending, Scientology filed a federal RICO suit against Wollersheim, as well as his attorneys and his two primary expert witnesses in the Main Action; this case was finally dismissed last year. (Religious Technology Center v. Wollersheim (9 Cir. 1986) 796 F.2d 1076, cert. den. 479 US 1103; dismissed (1992) 971 F.2d 364.) This was in addition to the federal action filed by Scientology to disqualify Judge Swearinger (Amd. O'Reilly Decl., Ex. 1, ¶ 8a). In both federal actions and in this action, Scientology improperly attempted to depose jurors and court personnel from the Main Action (see fn.10).

In addition, Scientology has consciously attempted to deprive Wollersheim of counsel and key witnesses and evidence in the Main Action, and has subjected him to its Fair Game policy. (Wollersheim Decl., Ex. 2.)

J. THIS ACTION IS PART OF PLAINTIFF'S LITIGATION STRATEGY OF ATTACKING JUDGES WHO RULE AGAINST THEM AS BIASED.

Scientology's litigation strategy includes attacking judges who rule against it, attempting to disqualify them based on claims of bias and prejudice. (Armstrong Decl., Ex 6, ¶ 9.)[19] Scientology pursued this strategy with a vengeance in the Main Action and derivative cases, disqualifying Judge Lopez under § 170.6 and attempting to disqualify Judges Swearinger and Margolis and the entire Los Angeles County Superior Court for bias in the Main Action, and filing an unsuccessful separate federal action, Church of Scientology v. Superior Court, USDC-C.D.Cal., CV 86-1362, which sought to disqualify Judge Swearinger in the Main Action because of alleged bias, as well as attempting to disqualify the entire U. S. District Court for the Central District of California because of alleged bias, in the federal "RICO" action filed against Wollersheim and his counsel and expert witnesses, RTC v. Wollersheim. (Amd. O'Reilly Decl., Ex. 1, ¶¶ 4, 5, 6 & 8.) This new lawsuit is merely the continuation of the same strategy with another vehicle.

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[18] In addition, from the beginning of the pre-trial proceedings until tn=he end of the case, Wollersheim's counsel had to spend approximately $450,000 on security to protect Wollersheim, his counsel, and his witnesses from threatened violence from a Scientology mob which subjected Wollersheim and his counsel to constant harassment and abuse. (Amd. O'Reilly Decl., Ex. 1, ¶ 11; Wollersheim Decl., Ex. 2.)

[19] See also Church of Scientology of California v. Cooper (DC Cal. 1980) 495 F.Supp. 455, 461, where the court ruled that plaintiff's recusal motion was based on false allegations but nonetheless granted the recusal motion; United States v. Heldt (DC Cir. 1981) 668 F.2d 1238, 1269-74, cert.den. 102 S.Ct. 1971, a criminal case against top Scientology officials, where the Court of Appeals rejected the defendants' arguments that trial Judge Richey should have been disqualified and called them "somewhat disingenuous".

K. PLAINTIFF HAS UNCLEAN HANDS AND IS NOT ENTITLED TO THE EQUITABLE RELIEF SOUGHT.

This lawsuit seeks equitable relief, which should be denied because plaintiff has unclean hands.

> "Under the 'unclean hands' doctrine, a party is barred from relief if he has engaged in any unconscientious conduct directly related to the transaction or matter before the court."

(DeRosa v. Transamerica Title Insurance Co. (1989) 213 Cal.App.3d 1390, 1395, 262 Cal.Rptr. 370.)

Here, as demonstrated above and in the footnote, plaintiff Scientology has engaged in abusive and unconscientious conduct directly related to the Main Action, the judgment in which this lawsuit seeks to set aside. This includes attempting to deprive defendant of his right to petition the government through use of litigation to harass him, falsification/ concealment of crucial evidence,[20] improper attempts to depose Main Action jurors and court personnel, efforts to deprive defendant of counsel, key witnesses and evidence, and subjecting him to the "Fair Game" policy. Therefore, equitable relief should be denied because of plaintiff's unclean hands.

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[20] Vicki Aznaran, then the top ecclesiastical authority within Scientology, states under penalty of perjury that after the judge in the Main Action ordered production of Wollersheim's folders, she "removed contents that might have been damaging to Scientology or might have supported Wollersheim's claims against Scientology. For example, I removed evidence of events involving his family, the anguish this caused him, evidence of disconnection from family and evidence of fair game." Aznaran Decl., Ex. 7, 6:1-9. Former Scientology attorney Joseph Yanny also states that during the Main Action there was

CONCLUSION.

Defendant's special motion to strike falls squarely within the scope of § 425.16. Plaintiff's action arises from defendant's exercise of his First Amendment right to petition the government by filing a lawsuit. Plaintiff cannot meet its burden of establish a probability that it will prevail in the action, for the reasons set forth above. Defendant's special motion to strike should therefore be granted and defendant should be awarded his attorneys' fees and costs.[21]

Dated: June 17, 1993

Respectfully submitted,

Daniel Leipold
Hagenbaugh & Murphy

Mark Goldowitz

Special Counsel for Defendant

By Mark Goldowitz

"wholesale destruction of evidence, theft of documents from private persons, and attempts to infiltrate the Court chambers of [Judge] Swearinger." Yanny Decl., Ex. 8, 32:25-27.

[21] Section 425.16(c) provides that a prevailing defendant on a special motion to strike "shall be entitled to his or her attorney's fees and costs." This language is mandatory. Defendant should therefore be awarded his fees and costs, which will be established by separately noticed motion if attempts at informal resolution of this matter do not succeed.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 701 S. Parker, Ste. 8200, Orange, California, 92668.

On June 21, 1993 I served the foregoing document described as: NOTICE OF RULING ON DEFENDANT'S EX PARTE APPLICATION FOR RELIEF FROM MISTAKE, ORDER RE EX PARTE APPLICATON FOR RELIEF FROM MISTAKE, and AMENDED MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF DEFENDANT'S SPECIAL MOTION TO STRIKE on the parties in this action

[] by placing the true copies thereof enclosed in sealed envelopes addressed as stated in the attached mailing list:

[X] by placing [] the original [X] a true copy thereof enclosed in sealed envelopes addressed as follows:

Laurie Bartilson
BOWLES & MOXON
6255 Sunset Blvd. Ste. 2000
Hollywood, California, 90028
_Also sent via Facsimile

[X] **BY MAIL**

[] I deposited such envelope in the mail at , California. The envelope was mailed with postage thereon fully prepaid.

[X] I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Orange, California.

[] **PERSONAL SERVICE** - I delivered such envelope by hand to the offices of the addressee.

Executed on at , California.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Nancy J. Greenan

Nancy J. Greenan

DECLARATION OF GERALD ARMSTRONG

I, Gerald Armstrong, having personal knowledge of the following, hereby declare and state:

1. I became involved with Scientology as a customer in 1969 in Vancouver, British Columbia. I worked on staff there in 1970 and in February 1971 joined the Sea Organization (SO or Sea Org) in Los Angeles. I was flown to Spain and joined the Sea Org's flag ship, "Apollo," in Morocco. L. Ron Hubbard, the Sea Org's "Commodore," was on board and operated Scientology internationally through the "crew" which numbered, during my stay on board of four and a half years, around four hundred. All my staff positions on board involved personal contact with L. Ron Hubbard, Mary Sue Hubbard, administrative organization staff and people in the ports and countries the "Apollo" visited, and included "Ship's Representative" (legal representative), "Port Captain" (public relations officer), and "Information Officer" (intelligence officer).

2. In the fall of 1975 after the ship operation moved ashore in Florida I was posted in the Guardian's Office (GO) Intelligence Bureau connected to Hubbard's Personal Office. From December 1975 through June 1976 I held the post of Deputy LRH External Communications Aide, a relay terminal for Hubbard's written and telex traffic to and from Scientology organizations. From July 1976 to December 1977 I was assigned, on Hubbard's order, to the "Rehabilitation Project Force" (RPF), the SO prison system. In 1978 I worked in Hubbard's cinematography crew in La Quinta, California, making movies under his direction until the fall of that year when he again

assigned me to the RPF, this time for eight months first in La Quinta, then at a newly purchased base in Gilman Hot Springs near Hemet, California. When I got out of the RPF in the Spring of 1979 and until the beginning of 1980, I worked in Hubbard's "Household Unit" (HU) at Gilman, the SO unit which took care of Hubbard's house, personal effects, transport, meals and so forth, as the "Purchaser," "Renovations In-Charge" and "Deputy Commanding Officer HU."

3. Throughout 1980 and until I left the organization in December 1981 I held the organization posts in Hubbard's "Personal Public Relations Bureau" of "LRH Archivist" and "LRH Personal Researcher." I assembled in Los Angeles an archive of Hubbard's writings and other materials relating to his history to be used as, inter alia, the basis for a biography to be written about the man. I also worked in Los Angeles for the first few months of 1980 on Mission Corporate Category Sortout (MCCS), which had the purpose of restructuring the Scientology enterprise so that Hubbard could continue to control it without being liable for its actions. Beginning in the fall of 1980 and continuing until my departure, I provided the biographical writings and other materials, as I collected and organized them, to Omar Garrison, who had contracted with the organization to write the Hubbard biography. I interviewed many people who had known Mr. Hubbard at periods throughout his life, including almost all of his known living relatives. I traveled several thousand miles collecting biographical information and conducting a genealogy search, and arranged the purchase of a number of collections of Hubbard-related

documents and other materials from individual collectors.

4. As a result of the activities described above, I have become very familiar with Scientology policies, practices, and policy documents. I also know that the Church of Scientology of California, as part of the Scientology organization, has followed and implemented these policies and practices, including those described below.

5. Attached to this declaration as Exhibit A is a true copy of a portion of volume II of The Technical Bulletins of Dianetics and Scientology, by L. Ron Hubbard, the founder of Scientology. It includes (at page 157) the following description of Scientology's practice of using litigation to harass its opponents:

> The purpose of the suit is to harass and discourage rather than to win. [¶] The law can be used very easily to harass, and enough harassment on somebody who is simply on the thin edge anyway...will generally be sufficient to cause his professional decease. If possible, of course, ruin him utterly.

6. Attached to this declaration as Exhibit B is a true copy of an internal Scientology document, Guardian Order 166, dated October 7, 1971. This document was written by the then Guardian, Jane Kember, at that time the most senior Scientology official under L. Ron Hubbard and his wife, Mary Sue Hubbard. GO 166 was included in the Intelligence Course Pack which I studied while I was the Intelligence Officer on Scientology's ship the "Apollo" in the 1970's. This document includes the following explanation that Scientology legal strategy in the U.S. is to use litigation as a financial club:

> The button used in effecting settlement is purely financial. In other words, it is more costly to continue the legal action than to settle in some fashion. ... [¶]

> Therefore, it is imperative that legal US Dev-T his opponents and their lawyers with correspondence (a lawyer's letter costs approx $50), phone calls (time costs), interrogatories, depositions and whatever else legal can mock up. [¶] One of the bright spots of US legal is that even if you lose you don't pay your opponent for his lawyers fees.

The phrase "Dev-T" is a term which Scientology uses to mean to cause someone to do unnecessary work.

7. Since leaving the Scientology organization, I have monitored the conduct of the organization, including the Church of Scientology of California. I am familiar with, and have been a target and victim of the "fair game" doctrine, which was described by the California Court of Appeal decisions in Church of Scientology v. Armstrong, Allard v. Church of Scientology, and Wollersheim v. Church of Scientology. Although Scientology claims that the "fair game" doctrine has been abandoned, I know from personal experience that this is not true, at least as recently as this year. For instance, Scientology attempted in the first few months of 1993 to have me jailed for contempt of court based on the false declaration of a Scientologist lawyer, Laurie Bartilson, for acts which Scientology itself set up. This is only the most recent of over a decade of "dirty tricks" which Scientology personnel have directed at me.

8. From my personal experience, I know that Scientology does use the litigation approach described by Hubbard and Kember in the quotes above. In various cases, Scientology has subjected me to over 35 days of depositions. As a paralegal working on cases involving Scientology for 16 months for Boston attorney Michael Flynn and for almost two years for California attorney Ford Greene (to the present), I have observed

Scientology's litigation practices. Scientology regularly attempts to bludgeon the opposition into submission with a blizzard of meritless paper, motions, depositions, appeals, writs, Bar complaints, criminal complaints, perjured testimony, and other improper and abusive tactics.

9. I am also aware that Scientology uses an attack strategy against judges who rule against it, which includes claims of bias and prejudice and frequently personal attacks. For instance, in my case, Church of Scientology of California v. Armstrong, L.A. Superior Court No. C 420153, Scientology twice tried unsuccessfully to disqualify Judge Breckenridge from the case because of alleged bias, and levied personal attacks on him, accusing him publicly of Nazi affiliation. Similarly, in Aznaran v. Church of Scientology of California, U.S.D.C. C.D.Cal # CV-88-1786-JMI, Scientology unsuccessfully attempted to recuse Judge James Ideman because of alleged bias.

10. Attached to this declaration as Exhibit C is a true copy of the June 20, 1984 decision by Judge Paul G. Breckenridge, Jr., in the case of Church of Scientology of California v. Gerald Armstrong, L.A. Superior Court No. C 420153, which was affirmed on appeal at 232 Cal.App.3d. 1060, 283 Cal.Rptr. 917 (1991).

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed this 4th day of June, 1993, at Oakland, California.

G.

Gerald Armstrong

EXHIBIT A

1846

The
Technical Bulletins
of
Dianetics and Scientology

by

L. Ron Hubbard

FOUNDER OF DIANETICS AND SCIENTOLOGY

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EXHIBIT A

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EXHIBIT A

IN ALL SUCH CASES OF ARREST FOR THE THE HASI WILL SEND A REPRESENTATIVE AT ONCE, BUT DO NOT WAIT FOR HIS ARRIVAL TO PLACE THIS SUIT. THE SUIT MUST ALREAD[illegible]VE BEEN FILED WHEN THE HASI ATTORNEY ARRIVES.

In other words, do not, at any moment leave this act unpunished, for, if you do you are harming all other Scientologists in the area. When you are attacked it is your responsibility then to secure from further attack not only yourself but all those who work with you. Cause blue flame to dance on the courthouse roof until everybody has apologized profusely for having dared to become so adventurous as to arrest a Scientologist who, as a minister of the church, was going about his regular duties. As far as the advices of attorneys go that you should not sue, that you should not attack, be aware of the fact that I, myself, in Wichita, Kansas, had the rather interesting experience of discovering that my attorney, employed by me and paid by me, had been for some three months in the employ of the people who were attacking me, and that this attorney had collected some insignificant sum of money after I hired him, by going over to the enemy and acting upon their advices. This actually occurred, so beware of attorneys who tell you not to sue. And I call to your attention the situation of any besieged fortress. If that fortress does not make sallies, does not send forth patrols to attack and harass, and does not utilize itself to make the besieging of it a highly dangerous occupation, that fortress may, and most often does, fall.

The DEFENSE of anything is UNTENABLE. The only way to defend anything is to ATTACK, and if you ever forget that, then you will lose every battle you are ever engaged in, whether it is in terms of personal conversation, public debate, or a court of law. NEVER BE INTERESTED IN CHARGES. DO, yourself, much MORE CHARGING, and you will WIN. And the public, seeing that you won, will then have a communication line to the effect that Scientologists WIN. Don't ever let them have any other thought than that Scientology takes all of its objectives.

Another point directly in the interest of keeping the general public to the general public communication line in good odor: it is vitally important that a Scientologist put into action and overtly keep in action Article 4 of the Code: "I pledge myself to punish to the fullest extent of my power anyone misusing or degrading Scientology to harmful ends." The only way you can guarantee that Scientology will not be degraded or misused is to make sure that only those who are trained in it practice it. If you find somebody practicing Scientology who is not qualified, you should give them an opportunity to be formally trained, at their expense, so that they will not abuse and degrade the subject. And you would not take as any substitute for formal training any amount of study.

You would therefore delegate to members of the HASI who are not otherwise certified only those processes mentioned below, and would discourage them from using any other processes. More particularly, if you discovered that some group calling itself "precept processing" had set up and established a series of meetings in your area, you would do all you could to make things interesting for them. In view of the fact that the HASI holds the copyrights for all such material, and that a scientific organization of material can be copyrighted and is therefore owned, the least that could be done to such an area is the placement of a suit against them for using materials of Scientology without authority. Only a member of the HASI or a member of one of the churches affiliated with the HASI has the authority to use this information. The purpose of the suit is to harass and discourage rather than to win.

The law can be used very easily to harass, and enough harassment on somebody who is simply on the thin edge anyway, well knowing that he is not authorized, will generally be sufficient to cause his professional decease. If possible, of course, ruin him utterly.

A D.Scn. has the power to revoke a certificate below the level of D.Scn. but not a D.Scn. However, he can even recommend to the CECS of the HASI that D.Scns. be revoked, and so any sincere Scientologist is capable of policing Scientology. This is again all in the interest of keeping the public with a good opinion of Scientology, since

EXHIBIT A

bad group proce[illegible]; and bad auditing are worse than bad [illegible]licity and are the worst thing that can happen to the general public to general public [illegible]munication line.

The best thing that can happen to it is good auditing, good public presentation, and a sincere approach on the subject of Scientology itself. Remember, we are interested in ALL treatment being beneficial, whether it is Scientology or not. For bad treatment in any line lowers the public opinion of all treatment.

In addressing persons professionally interested in the ministry, we have another interesting problem in public presentation. We should not engage in religious discussions. In the first place, as Scientologists, we are gnostics, which is to say that we know that we know. People in the ministry ordinarily suppose that knowingness and knowledge are elsewhere resident than in themselves. They believe in belief and substitute belief for wisdom. This makes Scientology no less a religion, but makes it a religion with an older tradition and puts it on an intellectual plane.

Religious philosophy, then, as represented by Scientology, would be opposed in such a discussion to religious practice. We are all-denominational rather than non-denominational, and so we should be perfectly willing to include in our ranks a Moslem, or a Taoist, as well as any Protestant or Catholic, while people of the ministry in Western civilization, unless they are evangelists, are usually dedicated severely to some faction which in itself is in violent argument with many other similar factions. Thus these people are ready to argue and are practiced in argument, and there are more interpretations of one line of scripture than there are sunbeams in a day. Beyond explaining one's all-denominational character, explaining that one holds the Bible as a holy work, one should recognize that the clergy of Western Protestant churches defines a minister or the standing of a church by these salient facts: Jesus Christ was the Savior of Mankind, Jesus Christ was the Son of God.

We in Scientology find no argument with this, and so in discussing Scientology with other ministry one should advance these two points somewhere in the conversation. Additionally, one should advance to the ministry exactly those things mentioned earlier as what we would like the general public to believe. Christ, if you care to study the New Testament, instructed his disciples to bring wisdom and good health to man, and promised mankind immortality, and said the Kingdom of Heaven was at hand, and the translators have not added that "at hand" possibly meant three feet back of your head. We could bring up these points but there is no reason to. You are not trying to educate other ministry. A friendly attitude toward other ministry in general, and fellow ministers in particular, is necessary.

The way to handle an individual minister of some other church is as follows: get him to tell you exactly what HE believes, get him to agree that religious freedom is desirable, then tell him to make sure that if that's the way he believes, he should keep on believing that, and that you would do anything to defend his right to believe that.

None of these people as individuals are antipathetic. They know a great deal about public presence, and can be respected for such knowledge. However, engaging in long discourses, or trying to educate a minister of some Protestant church or a priest of the Catholic faith into the tenets of Scientology is not desirable and is directly contrary to Article 10 of the Code of a Scientologist.

You will find you have many problems and people in common with other ministers. They're alive too. Also you will see a campaign to place only ministers in charge of the mind and mental healing. Talk about these things.

The Christian Church has been hurt by factionalism. We stand for peace and happiness. Therefore, let us carry it forward by example, not by unseemly discussions.

2. SCIENTOLOGISTS TO THE GENERAL PUBLIC

In the assemblage of congregations, and in addressing the general public at large, a Scientologist has a responsibility to give to the public, in the form of such congregations or meetings, information acceptable to them, which can be understood by them, and which will send them away with the impression that the Scientologist who addressed them knew definitely what he was talking about and that Scientology is an unconfused, clear-cut subject.

EXHIBIT A

EXHIBIT B

—71.

GUARDIAN ORDER

GO 1[illegible]
To all
A/Gs
D/G Legal
PROs
Bur 4s

7 October 1971

RE: BOOKS & ENTHETA WRITTEN ABOUT SCIENTOLOGY BY SPs

In the UK, the following legal actions have been done on entheta books which have been written about Scientology.

1. Satans Slaves - this was a book all about Charles Manson and hippie cults in California. In several places, throughout the book, Charles Manson was mentioned as a former Scientologist (untrue) and it was alleged that he got his start with Scientology etc.

The publishers of the book were sued for libel -- they did not serve a defence but instead asked for settlement. It was agreed that they would pay us £100 damages, together with the costs of the action. They also agreed to make an apology in open court and to discontinue publication and sales of the book.

2. A psychologist by the name of Dr. Christopher Evans was writing a book entitled "20th Century Cults". Legal started writing to him and his publishers and later his lawyers. No proceedings were started because the book had not been published. However, endless letters were sent to and fro over a period of about a year, during which time it was made clear to the publishers and their lawyers that if they published the book, they would have to fight a legal action, which would lose them money.

Finally the publishers lawyers wrote to us to say that there was no point in continuing the correspondence because the publishers had now decided not to publish the book. As of this date the book has not been published.

3. C. H. Rolph, (small time author and journalist), was commissioned by the NAMH U.K. to write a book on the subject of the NAMH conflict with Scientology, from their viewpoint. PRO got in touch with Rolph - Rolph came down to SH and there were a series of friendly letters. Rolph finally submitted his manuscript to PRO but, in spite of the friendly visits, it turned out that he was just a NAMH hack and had written an attack.

Legal wrote to him and his lawyers, and pointed out that publication would be a contempt of court (because of other legal actions which we have against the NAMH). The book has not been published.

4. "Scientology, what it is - what it does" by Rev. Morris Burrell was the first book published in the UK, solely on the subject of Scientology. Burrell had been in comm with PRO and a long series of letters had passed between them. But once again, the book when published turned out to be hostile. The front cover of the book contained the Scientology double triangle and our first thought was to begin legal proceedings for infringement of trademark. However, on reading the book, it was discovered that Burrell had mentioned a number of libel actions in which C of S was engaged and had commented upon them.

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Thus, being a contempt of court, legal moved e court for an order "that Morris C. Burrell do stand mmitted to Her Majesty's Prison at Brixton and that the ublishers may be so committed for their several and respective ontempts".

So, legal took them to Court, and the Judge found hat the book was a contempt of court. So the book was drawn from publication without any copies having been d to the public.

. The latest book is by Cyril Vosper called "The Mindbenders", stupid bit of matter. A preview of the book was sent out y the publishers, and PRO was alerted by a phone call from TV station, who wanted a confrontation on TV with Cyril osper. This gave the G.O. 24 hours to stop the book, the V confrontation and attendant bad publicity.

The book contained numerous quotes from Scientology ooks and policy letters etc and contained some data which osper had learned on the Solo Course. Legal proceedings ere brought on the basis of breach of copyright and breach f confidential relationship (meaning putting in details of he Solo Course). As time was short, B4 did a superb job of etting data, PRO did a superb job of stalling TV, and Legal ent round to the Judge in the evening at his own home, to ask or an injunction. (An injunction is a Court order stopping person from doing a particular act). In this case the njunction was to prevent the book from being sold or istributed. PRO went down to the TV station, to be ready o appear, in case the injunction was not obtained. The rogramme announcer had already made his introductions on yril and his book, when the phone rang in the studio, and our wyer informed the producer that the injunction had been ained. The announcer was forced to apologize to the wers, and PRO handled the resultant tension after the rogramme had not gone on, with a drunken Vosper and furious roducer.

The injunction was Ex parte (the other side was ot present when it was obtained) and 3 weeks later legal ent before the Court again for a contested hearing, to see hether the injunction should be continued or not. Legal won n both counts of copyright and breach of confidence. The ther side now have 14 days in which to appeal.

The point of relating these actions is to indicate hat the following countries have similar laws to Britain:

New Zealand

Australia

South Africa

Canada

There is no acceptable justification in these ntries for no action being taken against the publishers authors of entheta Books. The G.O. has to act fast, ectively and with imagination. The skill required is in

1) Having the brains to see a possible course of action, no matter how unlikely.

2) Having the necessary organisation to start that action immediately and bring it to a point of confrontation and decision. (The longer the delay, the greater the chance of failure).

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3) Legal U.K. seldom, if ever, assesses its chances of winning before commencing action. Its ability lies in getting the action into court fast, without a Q&A on the chances of winning. No-one can accurately assess in advance the chances of winning or losing, as this is a matter of individual lawyers, individual judges, how many arc breaks the judge had that day, the particular circumstance of the particular case which strikes the Judge and good fortune. Good fortune never strikes you in Court, unless you are in Court.

4) Legal U.K. has been in courts more often in the past 3 years than the rest of the Scientology world combined. They have won more cases and lost more cases than anywhere else. They lost cases they were sure they would win, and won cases they were sure they would lose. The losses did not hurt us, and the successes established an iron clad ethics presence, which has probably prevented more entheta than we will ever know about (B4 feedback lines confirm this).

5) Do not worry about whether you will win or lose, but direct all effort and concentration on the legal technicalities required to achieve a legal confrontation.

6) It is always technically possible - though sometimes difficult, to get into Court. The most difficult part is in forcing your legal team, especially outside lawyers, to get this done, in spite of their terror of losing. It requires intention, determination and forceful persistance to get this done. Not legal genius.

Re USA

In America, where Freedom of Speech includes freedom to malign with impunity, except for old ladies and crippled men, much more imagination is required. Because of the Constitution of America, and case law on libel, inclusive of recent Supreme Court decisions, it is impossible to prevent publication of libel. Attempts to prevent a book being published are called pre-publication censorship, and are extremely unpopular legally. However, where U.S. Legal has been successful is prior to Court appearances and actual trial in effecting settlement.

The button used in effecting settlement is purely financial. In other words, it is more costly to continue the legal action than to settle in some fashion. Using this, legal U.S. usually moves for retraction of the libel and/or publication of a correction or Scientology viewpoint.

Therefore, it is imperative that legal US Dev-T his opponents and their lawyers with correspondence (a lawyer's letter costs approx $50), phone calls (time costs), interrogatories, depositions and whatever else legal can mock up.

One of the bright spots of US legal is that even if you lose you don't pay your opponent for his lawyers fees. Therefore the cost of any legal action is small by comparison with Commonwealth Countries, where the loser pays everything.

N.B.: Any legal action on entheta publications needs the close co-ordination of PR, Legal and B4. One should carry forward without being afraid of being labelled Litigious. We want the reputation that we use the laws of

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[illegible] to uphold our legal and civil rights.

[illegible] Legal terminals have only just been set up [illegible] although the laws are different from Commonwealth and [illegible] there are actions which can be taken if they are [illegible]ched and forced through.

Up to this point, the G.O. has been entirely swayed by our wog lawyers negative opinions but legal in [illegible] should note the message in this Guardian order.

The message is that in combatting entheta articles and books, legal should be agressive, fast, persistent and untiring.

Every skirmish should be treated like a major battle.

Jane Kember
Guardian World Wide

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FILED
JUN 22 1984
John J. Corcoran,
Rosie M. Hart
BY ROSIE M. HART, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF CALIFORNIA, Plaintiff, vs. GERALD ARMSTRONG, Defendant.	No. C 420153
MARY SUE HUBBARD, Intervenor.	MEMORANDUM OF INTENDED DECISION

In this matter heretofore taken under submission, the Court announces its intended decision as follows:

As to the tort causes of action, plaintiff, and plaintiff in intervention are to take nothing, and defendant is entitled to Judgment and costs.

As to the equitable actions, the court finds that neither plaintiff has clean hands, and that at least as of this time, are not entitled to the immediate return of any document or objects presently retained by the court clerk. All exhibits

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received in evidence or marked for identification, unless specifically ordered sealed[1], are matters of public record and shall be available for public inspection or use to the same extent that any such exhibit would be available in any other lawsuit. In other words they are to be treated henceforth no differently than similar exhibits in other cases in Superior Court. Furthermore, the "inventory list and description," of materials turned over by Armstrong's attorneys to the court, shall not be considered or deemed to be confidential, private, or under seal.

All other documents or objects presently in the possession of the clerk (not marked herein as court exhibits) shall be retained by the clerk, subject to the same orders as are presently in effect as to sealing and inspection, until such time as trial court proceedings are concluded as to the severed cross complaint. For the purposes of this Judgment, conclusion will occur when any motion for a new trial has been denied, or the time within such a motion must be brought has expired without such a motion being made. At that time, all documents neither received in evidence, nor marked for identification only, shall be released by the clerk to plaintiff's representatives. Notwithstanding this order, the parties may

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[1] Exhibits in evidence No. 500-40; JJJ; KKK; LLL: MMM; NNN; OOO; PPP; QQQ; RRR; and 500-QQQQ.

Exhibits for identification only No. JJJJ; Series 500-DDDD, EEEE, FFFF, GGGG, HHHH, IIII, NNNN-1, OOOO, ZZZZ, CCCCC, GGGGG, IIIII, KKKKK, LLLLL, OOOOO, PPPPP, QQQQQ, BBBBBB, OOOOOO, BBBBBBB.

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at any time by written stipulation filed with the clerk obtain release of any or all such unused materials.

Defendant and his counsel are free to speak or communicate upon any of Defendant Armstrong's recollections of his life as a Scientologist or the contents of any exhibit received in evidence or marked for identification and not specifically ordered sealed. As to all documents, and other materials held under seal by the clerk, counsel and the defendant shall remain subject to the same injunctions as presently exist, at least until the conclusion of the proceedings on the cross complaint. However, in any other legal proceedings in which defense counsel, or any of them, is of record, such counsel shall have the right to discuss exhibits under seal, or their contents, if such is reasonably necessary and incidental to the proper representation of his or her client.

Further, if any court of competent jurisdiction orders defendant or his attorney to testify concerning the fact of any such exhibit, document, object, or its contents, such testimony shall be given, and no violation of this order will occur. Likewise, defendant and his counsel may discuss the contents of any documents under seal or of any matters as to which this court has found to be privileged as between the parties hereto, with any duly constituted Governmental Law Enforcement Agency or submit any exhibits or declarations thereto concerning such document or materials, without violating any order of this court.

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This court will retain jurisdiction to enforce, modify, alter, or terminate any injunction included within the Judgment.

Counsel for defendant is ordered to prepare, serve, and file a Judgment on the Complaint and Complaint in Intervention, and Statement of Decision if timely and properly requested, consistent with the court's intended decision.

Discussion

The court has found the facts essentially as set forth in defendant's trial brief, which as modified, is attached as an appendix to this memorandum. In addition the court finds that while working for L.R. Hubbard (hereinafter referred to as LRH), the defendant also had an informal employer-employee relationship with plaintiff Church, but had permission and authority from plaintiffs and LRH to provide Omar Garrison with every document or object that was made available to Mr. Garrison, and further, had permission from Omar Garrison to take and deliver to his attorneys the documents and materials which were subsequently delivered to them and thenceforth into the custody of the County Clerk.

Plaintiff Church has made out a prima facie case of conversion (as bailee of the materials), breach of fiduciary duty, and breach of confidence (as the former employer who provided confidential materials to its then employee for certain specific purposes, which the employee later used for other purposes to plaintiff's detriment). Plaintiff Mary Jane Hubbard has likewise made out a prima facie case of conversion

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and invasion [illegible] privacy (misuse by a pe[illegible]n of private matters entrusted to him for certain specific purposes only).

While defendant has asserted various theories of defense, the basic thrust of his testimony is that he did what he did, because he believed that his life, physical and mental well being, as well as that of his wife were threatened because the organization was aware of what he knew about the life of LRH, the secret machinations and financial activities of the Church, and his dedication to the truth. He believed that the only way he could defend himself, physically as well as from harassing lawsuits, was to take from Omar Garrison those materials which would support and corroborate everything that he had been saying within the Church about LRH and the Church, or refute the allegations made against him in the April 22 Suppressive Person Declare. He believed that the only way he could be sure that the documents would remain secure for his future use was to send them to his attorneys, and that to protect himself, he had to go public so as to minimize the risk that LRH, the Church, or any of their agents would do him physical harm.

This conduct if reasonably believed in by defendant and engaged in by him in good faith, finds support as a defense to the plaintiff's charges in the Restatements of Agency, Torts, and case law.

Restatement of Agency, Second, provides:

> "Section 395f: An agent is privileged to reveal information confidentially acquired by him in the course of his agency in the protection of a superior interest of himself or a third person.

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"Section 418: An agent is privileged to protect interests of his own which are superior to those of the principal, even though he does so at the expense of the principal's interest or in disobedience to his orders."

Restatement of torts, Second, section 271:

"One is privileged to commit an act which would otherwise be a trespass to or a conversion of a chattel in the possession of another, for the purpose of defending himself or a third person against the other, under the same conditions which would afford a privilege to inflict harmful or offensive contact upon the other for the same purpose."

The Restatement of Torts, Second, section 652a, as well as case law, make it clear that not all invasions of privacy are unlawful or tortious. It is only when the invasion is unreasonable that it becomes actionable. Hence, the trier of fact must engage in a balancing test, weighing the nature and extent of the invasion, as against the purported justification therefore to determine whether in a given case, the particular invasion or intrusion was unreasonable.

In addition the defendant has asserted as a defense the principal involved in the case of Willig v. Gold, 75 Cal.App.2d, 809, 814, which holds that an agent has a right or privilege to disclose his principal's dishonest acts to the party prejudicially affected by them.

Plaintiff Church has asserted and obviously has certain rights arising out of the First Amendment. Thus, the court cannot, and has not, inquired into or attempted to evaluate the merits, accuracy, or truthfulness of Scientology or any of its precepts as a religion. First Amendment rights, however, cannot be utilized by the Church or its members, as a sword to preclude the defendant, whom the Church is suing, from defending himself. Therefore, the actual practices of the Church or its members, as it relates to the reasonableness of the defendant's conduct and his state of mind are relevant, admissible, and have been considered by the court.

As indicated by its factual findings, the court finds the testimony of Gerald and Jocelyn Armstrong, Laurel Sullivan, Nancy Dincalcis, Edward Walters, Omar Garrison, Kima Douglas, and Howard Schomer to be credible, extremely persuasive, and the defense of privilege or justification established and corroborated by this evidence. Obviously, there are some discrepancies or variations in recollections, but these are the normal problems which arise from lapse of time, or from different people viewing matters or events from different perspectives. In all critical and important matters, their testimony was precise, accurate, and rang true. The picture painted by these former dedicated Scientologists, all of whom were intimately involved with LRH, or Mary Jane Hubbard, or of the Scientology Organization, is on the one hand pathetic, and on the other, outrageous. Each of these persons literally gave years of his or her respective life in support of a man, LRH, and his ideas. Each has manifested a waste and loss or frustration which is incapable of description. Each has broken with the movement for a variety of reasons, but at the same time, each is, still bound by the knowledge that the Church has

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in its posse[illegible] on his or her most inner [illegible]oughts and confessions, all recorded in "pre-clear (P.C.) folders" or other security files of the organization, and that the Church or its minions is fully capable of intimidation or other physical or psychological abuse if it suits their ends. The record is replete with evidence of such abuse.

In 1970 a police agency of the French Government conducted an investigation into Scientology and concluded, "this sect, under the pretext of 'freeing humans' is nothing in reality but a vast enterprise to extract the maximum amount of money from its adepts by (use of) pseudo-scientific theories, by (use of) 'auditions' and 'stage settings' (lit. to create a theatrical scene') pushed to extremes (a machine to detect lies, its own particular phraseology . .), to estrange adepts from their families and to exercise a kind of blackmail against persons who do not wish to continue with this sect."[2] From the evidence presented to this court in 1984, at the very least, similar conclusions can be drawn. In addition to violating and abusing its own members civil rights, the organization over the years with its "Fair Game" doctrine has harassed and abused those persons not in the Church whom it perceives as enemies. The organization clearly is schizophrenic and paranoid, and this bizarre combination seems to be a reflection of its founder LRH. The evidence portrays a man who has been virtually a pathological liar when it comes to his history, background, and achievements. The writings and documents in evidence additionally reflect his egoism, greed, avarice, lust for power, and vindictiveness and aggressiveness against persons perceived by him to be disloyal or hostile. At the same time it appears that he is charismatic and highly capable of motivating, organizing, controlling, manipulating, and inspiring his adherents. He has been referred to during the trial as a "genius," a "revered person," a man who was "viewed by his followers in awe." Obviously, he is and has been a very complex person, and that complexity is further reflected in his alter ego, the Church of Scientology. Notwithstanding protestations to the contrary, this court is satisfied that LRH runs the Church in all ways through the Sea Organization, his role of Commodore, and the Commodore's Messengers.[3] He has, of course, chosen to go into "seclusion," but he maintains contact and control through the top messengers. Seclusion has its light and dark side too. It adds to his mystique, and yet shields him from accountability and subpoena or service of summons.

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[2] Exhibit 500-HHHHH.

LRH's wife, Mary Sue Hubbard is also a plaintiff herein. On the one hand she certainly appeared to be a pathetic individual. She was forced from her post as Controller, convicted and imprisoned as a felon, and deserted by her husband. On the other hand her credibility leaves much to be desired. She struck the familiar pose of not seeing, hearing,

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[3] See Exhibit K: Flag Order 3729 - 15 September 1978 "Commodore's Messengers."

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or knowing a[illegible] evil. Yet she was the he[illegible] of the Guardian Office for years and among other things, authored the infamous order "GO 121669"[4] which directed culling of supposedly confidential P.C. files/folders for purposes of internal security. In her testimony she expressed the feeling that defendant by delivering the documents, writings, letters to his attorneys, subjected her to mental rape. The evidence is clear and the court finds that defendant and Omar Garrison had permission to utilize these documents for the purpose of Garrison's proposed biography. The only other persons who were shown any of the documents were defendant's attorneys, the Douglasses, the Dincalcis, and apparently some documents specifically affecting LRH's son "Nibs," were shown to "Nibs." The Douglasses and Dincalcises were disaffected Scientologists who had a concern for their own safety and mental security, and were much in the same situation as defendant. They had not been declared as suppressive, but Scientology had their P.C. folders, as well as other confessions, and they were extremely apprehensive. They did not see very many of the documents, and it is not entirely clear which they saw. At any rate Mary Sue Hubbard did not appear to be so much distressed by this fact, as by the fact that Armstrong had given the documents to Michael Flynn, whom the Church considered its foremost

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[4] Exhibit AAA.

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lawyer-enemy.⁵ However, just as the plaintiffs have First Amendment rights, the defendant has a Constitutional right to an attorney of his own choosing. In legal contemplation the fact that defendant selected Mr. Flynn rather than some other lawyer cannot by itself be tortious. In determining whether the defendant unreasonably invaded Mrs. Hubbard's privacy, the court is satisfied the invasion was slight, and the reasons and justification for defendant's conduct manifest. Defendant was told by Scientology to get an attorney. He was declared an enemy by the Church. He believed, reasonably, that he was subject to "fair game." The only way he could defend himself, his integrity, and his wife was to take that which was available to him and place it in a safe harbor, to wit, his lawyer's custody. He may have engaged in overkill, in the sense that he took voluminous materials, some of which appear only marginally relevant to his defense. But he was not a lawyer and cannot be held to that precise standard of judgment. Further, at the time that he was accumulating the material, he was terrified and undergoing severe emotional turmoil. The court is satisfied that he did not unreasonably intrude upon Mrs. Hubbard's privacy under the circumstances by in effect simply making his knowledge that of his attorneys. It is, of course, rather ironic that the person who authorized G.O. order 121669 should complain about an invasion of privacy. The

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5. "No, I think my emotional distress and upset is the fact that someone took papers and materials without my authorization and then gave them to your Mr. Flynn." Reporter's Transcript, p. 1006.

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practice of culling supposedly confidential "P.C. folders or files" to obtain information for purposes of intimidation and/or harassment is repugnant and outrageous. The Guardian's Office, which plaintiff headed, was no respector of anyone's civil rights, particularly that of privacy. Plaintiff Mary Sue Hubbard's cause of action for conversion must fail for the same reason as plaintiff Church. The documents were all together in Omar Garrison's possession. There was no rational way the defendant could make any distinction.

Insofar as the return of documents is concerned, matters which are still under seal may have evidentiary value in the trial of the cross complaint or in other third party litigation. By the time that proceedings on the cross complaint are concluded, the court's present feeling is that those documents or objects not used by that time should be returned to plaintiff. However, the court will reserve jurisdiction to reconsider that should circumstances warrant.

Dated: June 20, 1984

PAUL G. BRECKENRIDGE, JR.
Judge of the Superior Court

THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED IS A FULL TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE AND OF RECORD IN MY OFFICE.
ATTEST SEP 11 1984 19
JOHN J. CORCORAN, County Clerk and Clerk of the Superior Court of California, County of Los Angeles
BY S. Hurst DEPUTY
S. HURST

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1868

93-70281

RECEIVE
CATHY A. CATTERSON, C
U.S. COURT OF APPEA
JUN 21 1993
FILED 6/21/9
DOCKETED 6/25/9
DATE

ORIGINAL

DOCKETED

DECLARATION OF HON. JAMES M. IDEMAN

I, James M. Ideman, declare as follows:

1. Portions of this petition will become moot because I have decided to recuse myself from this case. Plaintiff has recently begun to harass my former law clerk who assisted me on this case, even though she now lives in another city and has other legal employment. This action, in combination with other misconduct by counsel over the years has caused me to reassese my state of mind with respect to the propriety of my continuing to preside over the matter. I have concluded that I should not. I have delayed the effective date of my recusal, however, so that I could respond on behalf of my court to the allegations in the petition.

2. I should say at the outset that this case should soon be concluded in the District Court and thus available for appellate review. I am confident that such a review will reveal that the plaintiff's claims raised in this petition are groundless. I would strongly recommend that any definitive appellate action be deferred pending a thorough review on appeal and that years of work not be wiped out by granting petitioner's extraordinary writ.

3. The past 8 years have consisted mainly of a prolonged, and ultimately unsuccessful, attempt to persuade or compel the plaintiff to comply with lawful discovery. These efforts have been fiercely resisted by plaintiffs. They have

utilized every device that we on the District Court have ever heard of to avoid such compliance, and some that are new to us.

4. This noncompliance has consisted of evasions, misrepresentations, broken promises and lies, but ultimately with refusal. As part of this scheme to not comply, the plaintiffs have undertaken a massive campaign of filing every conceivable motion (and some inconceivable) to disguise the true issue in these pretrial proceedings. Apparently viewing litigation as war, plaintiffs by this tactic have had the effect of massively increasing the costs to the other parties, and, for a while, to the Court. The appointment of the Special Master 4 years ago has considerably relieved the burden to this Court. The scope of plaintiff's efforts have to be seen to be believed. (See, Exhibit "A", photo of clerk with filings, and Exhibit "B", copy of clerk's docket with *81* pages and *1,737* filings.)

5. Yet, it is almost all puffery -- motions without merit or substance. Notwithstanding this, I have carefully monitored the Special Master's handling of these motions. I saw no need to try to improve on the Special Master's writings if I agreed with the reasons and the results. However, with respect to the major ruling that I have made during these proceedings, the dismissal of the plaintiff's claims, the following occurred:

6. The Special Master, after years of efforts to compel compliance with discovery, purported to order a dismissal of plaintiff's claims. Although the action was probably long overdue, the Special Master did not have the authority to make such a dispositive order. In reviewing his order, as I did with all of his actions, I saw what he had done and did not approve it. I treated the Special Master's "order" as a recommendation and gave notice to the parties that they could have a hearing and invited briefs. Only after considering fully the briefs of the parties did I give approval to the dismissal. It is true that I adopted the language chosen by the Special Master, but that was because I fully agreed with his reasoning and saw no need to write further.

7. Plaintiffs are unhappy with Judge Kolts and me for insisting that they comply fully with discovery or forfeit their case. For this reason they wish to have our work set aside and begin anew with another judge who may, they hope, permit them to litigate their claims without complying with discovery, or, perhaps, to further punish the other parties with more years of expensive litigation. This they should not be permitted to do, especially by means of the limited review possible on an extraordinary writ.

8. I respectfully recommend that the petitioner's claims that are not mooted by my withdrawal from the case be denied without prejudice to review of same upon appeal.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 17th day of June, 1993 at Los Angeles, California.

James M. Ideman
United States District Judge

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July 23, 1993

Laurie J. Bartilson
BOWLES & MOXON
6255 Sunset Boulevard, Suite 2000
Los Angeles, California 90028

By Telecopier
213-953-3351

RE: *Church of Scientology International v. Armstrong*
Los Angeles Superior Court
Case No. **BC 052 395**

Dear Ms. Bartilson:

In light of the fact that the injunction you claim my client to have violated does not prohibit Mr. Armstrong from providing declarations to private litigant defendants, and in light of the fact that your organization sued Mr. Wollersheim and Mr. Armstrong's perceived injunctional transgression is to have executed a declaration in support of defendant Wollersheim's motion to dismiss your suppressive litigation against him, any OSC that you seek on these grounds is without merit and frivolous.

We will oppose your meritless OSC and seek sanctions for having to again deal with your spurious efforts at using litigation as a tool of repression.

Sincerely,

FORD GREENE

:acg
cc: Paul Morantz (By Telecopier)
Andrew H. Wilson (By Telecopier)

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July 23, 1993
1207 PDT

Laurie J. Bartilson, Esquire
Bowles & Moxon
6255 Sunset Boulevard
Suite 2000
Los Angeles, CA 90028

BY FAX (213)953-3351

Dear Ms. Bartilson:

I have been directed by Mr. Greene to ask you to fax to this office immediately all your papers relating to your attempt to have me held in contempt for providing a declaration to Lawrence Wollersheim.

Thank you for your attention to this matter.

Yours sincerely,

Gerald Armstrong
for Ford Greene, Esquire

:ga

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JUL 26 1993
HUB LAW OFFICES

July 23, 1993

BY TELEFAX AND U.S. MAIL

Ford Greene
711 Sir Francis Drake Blvd.
San Anselmo, California 94960-1949

Re: Church of Scientology International v. Gerald Armstrong

Dear Mr. Greene:

I am in receipt of the attached letter from your client, Gerald Armstrong.

In light of the unfounded accusations which you have leveled at me in the past, I am sure you can appreciate that I am unwilling to engage in any direct communication with your client, absent your written authorization.

As soon as the order to show cause papers are completed, I will fax them to your office, as has always been our custom. They are as yet incomplete.

Please advise whether or not you intend to oppose the application.

Sincerely,

BOWLES & MOXON

Laurie J. Bartilson

LJB:mfh
Enc.
cc: Paul Morantz **BY TELEFAX AND U.S. MAIL**
cc: Andrew H. Wilson **BY TELEFAX AND U.S. MAIL**

Ford Greene
Lawyer

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July 30, 1993

Laurie J. Bartilson
Office of Special Affairs, Legal
BOWLES & MOXON
6255 Sunset Boulevard, Suite 2000
Los Angeles, California 90028

RE: *Church of Scientology International v. Armstrong*
Los Angeles Superior Court
Case No. **BC 052 395**

Dear Ms. Bartilson:

Further to my letter to you dated July 23, 1993, I call your attention to the position that you and your organization took in the respondent's brief in the appeal of the Sohigian injunction presently pending before the Second District Court of Appeal. Specifically, your brief states:

> The Superior Court was careful to delineate, in terms as precise as permitted by the English language, what Armstrong may do or not do under the terms of the injunction. Armstrong may not voluntarily assist a non-governmental party in litigating or arbitrating a claim against [scientology], or in preparing to litigate or arbitrate such claim. He may assist such a party in other respects, *i.e.,* in respects other than "regarding such claim." Likewise, he may accept subpoenas and testify, and he is under no obligation to engage in "physical resistance, obstructive tactics, or flight" to avoid service of subpoenas. He may engage in employment as a paralegal, so long as he does not assist with respect to actual or potential litigation or arbitration claims against [scientology]. And, of course, he may report criminal activity to the appropriate authorities.

(Respondent's Brief, at pp. 33-34: copy enclosed for ease of your review.)

As you know, your organization has sued Mr. Wollersheim as a defendant, and it is in that case that Mr. Armstrong filed a declaration. Thus, the declaration is outside the scope of the language that you have submitted to the court of appeal as defining the scope of the agreement. Now, in the trial court, you are taking the opposition position: that somehow the injunction prohibits Armstrong from assisting people that_you sue. This is unethical, unfair, wrong, and the proper subject of an estoppel. It must be the result of an order by David Miscavige rather than your own legal judgment that is talking here. Again, please be on notice that we will seek sanctions should you continue to prosecute your ludicrous and legally abusive action for contempt. Therefore, please withdraw this particular enforcement action.

Also, I call to your attention the fact that you misrepresented to the court that neither Armstrong nor I indicated whether or not we would oppose your application for the OSC re Contempt. My May_July 23, 1993, letter quite clearly stated our position to the contrary.

Sincerely,

FORD GREENE

:acg
Encl.
cc: Paul Morantz (with enclosure)
Andrew H. Wilson (with enclosure)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION FOUR

Civ. No. B 069450
(Super. Ct. No. BC 052395)

CHURCH OF SCIENTOLOGY INTERNATIONAL,

Plaintiff-Respondent,

-vs-

GERALD ARMSTRONG,

Defendant-Appellant.

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APR 23 1993
HUB LAW OFFICES

On Appeal From Superior Court Of The State of California
County of Los Angeles
The Honorable Ronald M. Sohigian

BRIEF FOR RESPONDENT

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Attorneys for Respondent

in their deed, which prohibited the dispensing of petroleum products on their property. *Boughton, supra*, 231 Cal. App. 2d at 190, 41 Cal.Rptr. at 714-715.

In rejecting this argument, the *Boughton* court stated:

> . . . [W]hile the cases are uniform in refusing to enforce a contract wherein one is restrained from pursuing an *entire* business, trade or profession, as falling within the ambit of section 16600 [citations omitted], where one is barred from pursuing only a *small or limited part* of business, trade or profession, the contract has been upheld as valid.

Id. at 192, 716 (emphasis added.)

Applying this principle, the *Boughton* court concluded that, because the plaintiffs were not prohibited from carrying on the lawful business of selling petroleum products or operating a service station but were barred from doing so only on a particular piece of property, the covenant was *not* an unlawful restraint on trade and thus was valid. *Id.* at 716. *See, also, King* v. *Gerold* (1952) 240 P.2d 710.

The holdings of *Boughton* and *King* are controlling here. The preliminary injunction prohibits Armstrong in effect from pursuing only a limited portion of the trade or business of being a paralegal, *i.e.*, working on cases that involve the Church.

III. The Terms of the Injunction are Clear and Enforceable

The Superior Court was careful to delineate, in terms as precise as permitted by the English language, what Armstrong may do or not do under the terms of the injunction. Armstrong may not voluntarily assist a non-governmental party in litigating or arbitrating a claim against the Church, or in preparing to litigate or arbitrate such a claim. He may assist such a party in other respects, *i.e.*, in respects other than "regarding such claim." Likewise, he may accept subpoenas and testify, and he is under no obligation to engage in "physical resistance, obstructive tactics, or flight" to avoid service of subpoenas.

He may engage in employment as a paralegal, so long as he does not assist with respect to actual or potential litigation or arbitration claims against the Church. And, of course, he may report criminal activity to the appropriate authorities.

Armstrong nevertheless claims that the injunction is "fraught with uncertainty", and conjures up a variety of marginal and insignificant acts which he claims may or may not be covered by the injunction.

Armstrong raises the specter of problems that he himself has generated by his own violation of the settlement agreement. After receiving nearly a million dollars from the Church in 1986, he decided to start a new career as a paralegal and work for two of the small handful of attorneys who regularly litigate against the Church. Thus, Armstrong accepted employment with Joseph Yanny and Ford Greene precisely to assist in litigation against the Church, in direct violation of the settlement agreement. All of the supposedly perplexing conundrums that Armstrong faces, *e.g.* whether "licking a stamp' or "answering the phone" violates the injunction, are questions that would not need to be asked had Armstrong not decided to seek "employment" in the very matters from which he had agreed to abstain. All of Armstrong's alleged complexities and vaguenesses arise from the simple fact that Armstrong has breached the settlement agreement.[17]

---

[17] Under Armstrong's reasoning, if Armstrong had signed an agreement prohibiting him from coming within 100 yards of his former spouse, and then moved into the apartment next door to her, the court would be precluded from enforcing the injunction because it would require "protracted supervision" from the court. Similarly Armstrong would claim impermissible vagueness on the grounds that he was unable to discern exactly when his former spouse was 100 yards away from him due since the intervening walls of the apartment blocked his view. Obviously, the difficulties stem from Armstrong's actions, not the court's.

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FILED
LOS ANGELES SUPERIOR COURT
SEP 07 1993
JAMES H. DEMPSEY, CLERK
BY INNA R. MATTHEWS, DEPUTY

FILED
NOV 16 1994
HOWARD HANSON
MARIN COUNTY CLERK
BY ________ DEP.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation; Plaintiffs, vs. GERALD ARMSTRONG; DOES 1 through 25, inclusive, Defendants.	157680 No. **BC 052395** **DEFENDANT ARMSTRONG'S MEMORANDUM IN OPPOSITION TO TO ORDER TO SHOW CAUSE RE CONTEMPT;** **REQUEST FOR MONETARY SANCTIONS** Date: September 14, 1993 Time: 9:30 a.m. Dept: 86 Trial Date: Stayed Discovery Cut Off: Stayed Motion Cut Off: Stayed

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation; Plaintiffs, vs. GERALD ARMSTRONG; DOES 1 through 25, inclusive, Defendants.	No. BC 052395 **DEFENDANT ARMSTRONG'S MEMORANDUM IN OPPOSITION TO TO ORDER TO SHOW CAUSE RE CONTEMPT;** **REQUEST FOR MONETARY SANCTIONS** Date: September 14, 1993 Time: 9:30 a.m. Dept: 86 Trial Date: Stayed Discovery Cut Off: Stayed Motion Cut Off: Stayed

I. INTRODUCTION

In a familiar fit of pique Scientology asks this Court to conclude that Gerald Armstrong has violated an order of this Court. The request is spurious because it has no basis in either law or reality. Scientology claims that Armstrong has violated an aspect of a preliminary injunction issued by the Honorable Ronald M. Sohigian on May 28, 1992. The Order that Scientology claims Armstrong to have transgressed and violated, however, does not exist. What is before the Court is merely another manifestation of Scientology's compulsion to use the legal system as a club to beat its critics, here one more time, Gerald Armstrong, into the dirt. The Order to Show Cause must be denied.

Due to the application's complete lack of merit, and due to the fact that Church of Scientology International and its counsel Laurie J. Bartilson and the law firm Bowles and Moxon have disregarded Armstrong's request to desist from prosecuting this meritless attack, Gerald Armstrong seeks monetary sanctions in the amount of $3,026.50 against Church of Scientology International and its counsel Laurie J. Bartilson and the law firm Bowles and Moxon.

II. STATEMENT OF FACTS

A. The Factual Basis For The Alleged Violation

On July 23, 1993, counsel for Armstrong received a telecopied letter from scientologist attorney Laurie Bartilson which stated in its entirety the following:

> Please take notice that on Monday, July 26, 1993, at 8:30 a.m., plaintiff Church of Scientology International will appear in Department 86 of the Los Angeles Superior Court, and request that an order issue, pursuant to Code of Civil Procedure Section 1212, directing Gerald Armstrong to show cause why he should not be held in contempt of court and sanctioned. Plaintiff intends to base its request on the declaration, dated June 4, 1993, which Armstrong

> provided to Larry Wollersheim and his attorneys in direct contravention of the injunction issued in this case by Judge Sohigian on May 28, 1992.

(Declaration of Ford Greene ["Greene Decl."], Ex. A.)

In her declaration submitted in support of the application for an order to show cause Ms. Bartilson states,

> "I allege the execution and delivery of the June 4, 1993 declaration by Armstrong to Wollersheim and/or Wollersheim's counsel is a violation of the prohibition in the May 28 order against voluntary assistance to Church adversaries in litigation and is in deliberate contempt of this Court's authority."

The language of the charging declaration does not even conform with the terms of the injunction. The charging declaration seeks to puff-up the scope of the provisions of the injunction to include individuals whom Scientology is suing. The language of the injunction clearly shows such puffery is false.

B. The Preliminary Injunction

On May 28, 1992 Judge Sohigian issued the following preliminary injunction:

> Defendant Gerald Armstrong, his agents, and persons acting in concert or conspiracy with him (excluding attorneys at law who are not said defendant's agents or retained by him) are restrained and enjoined during the pendency of this suit pending further order of court from doing directly or indirectly any of the following:
>
> Voluntarily assisting any person (not a governmental organ or entity) intending to make, intending to press, intending to arbitrate, or intending to litigate a **claim against** the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986 regarding such claim or regarding pressing, arbitrating, or litigating it.
>
> Voluntarily assisting any person (not a governmental organ or entity) arbitrating or litigating a **claim against** the persons referred to in sec 1 of the "Mutual Release of

All Claims and Settlement Agreement" of December, 1986. (Greene Decl., Ex. B.)

It is clearly discernable that, whatever infirmities intrinsic to the injunction there are, Armstrong is prohibited from "voluntarily assisting" persons with claims "against" Scientology. [1] In other words, Armstrong is prohibited from assisting private litigant plaintiffs in litigation in which Scientology is a party. The injunction is completely silent, however, as to Armstrong's voluntarily assisting persons against whom Scientology is litigating any claim of its own. Such injunctive silence, however, is explicit in its denial of Scientology's application for injunctive relief as to all other aspects of the subject settlement agreement Scientology sought to have enforced, which includes defendants adverse to Scientology. Thus, the injunction does not in any way prohibit Armstrong from assisting private litigant defendants.

C. Wollersheim Is A Private Litigant Defendant

On or about February 16, 1993, in LASC No. BC 074815, (hereinafter "Wollersheim II") Scientology sued Larry Wollersheim in an effort to eradicate the jury verdict in Wollersheim v. Church of Scientology as reported in 1989 at 212 Cal.App.3d 872.

---

[1] This point does not waive, however, that Armstrong is taking the position that the injunction prohibits him from providing routine clerical assistance in Ford Greene's office on behalf of private plaintiff litigants. Simply, that issue is not before this Court at this time. Therefore, it will not be discussed.

(hereinafter "Wollersheim I".) [2]

The gravamen of the complaint in Wollersheim II is that the Honorable (and now deceased) Ronald Swearinger, the trial judge in Wollersheim I, was biased against Scientology because he allegedly believed, during the trial of Wollersheim I, that Scientology had killed his dog and otherwise acted against him. (Greene Decl., Ex. C - Complaint in Wollersheim II.)

For the purposes of the instant application, the only salient point is that in Wollersheim II, Scientology sued Wollersheim. Therefore, any assistance provided by Armstrong to Wollersheim in Wollersheim II is outside the scope of the Sohigian Injunction.

---

[2] In Wollersheim I, the Second District characterized Scientology as the modern day equivalent to the Christian Inquisition because Scientology seeks to "neutralize" its critics or "heretics" such as Wollersheim and Armstrong. It stated:

> "To illustrate, centuries ago the inquisition was one of the core religious practices of the Christian religion in Europe. This religious practice involved torture and execution of heretics and miscreants. [Citation.] Yet should any church seek to resurrect the inquisition in this country under a claim of free religious expression, can anyone doubt the constitutional authority of an American government to halt the torture and executions? And can anyone seriously question the right of the victims of our hypothetical modern day inquisition to sue their tormentors for any injuries - physical or psychological - they sustained?
>
> We do not mean to suggest Scientology's retributive program . . . represented a full-scale modern day 'inquisition.' Nevertheless, there are some parallels in purpose and effect. 'Fair game' like the 'inquisition' targeted 'heretics' who threatened the dogma and institutional integrity of the mother church. Once 'proven' to be a 'heretic,' an individual was to be neutralized. In medieval times neutralization often meant incarceration, torture and death. [Citations.] As described in the evidence at this trial the 'fair game' policy neutralized the 'heretic' by stripping this person of his or her economic, political and psychological power."

Id. 212 Cal.App.3d at 888.

D. Armstrong's Assistance In Wollersheim II

On June 21, 1993, Wollersheim filed his Amended Memorandum of Points and Authorities in Support of Defendant's Special Motion to Strike authorized by Code of Civil Procedure section 425.16. [3] (Greene Decl., Ex. D.)

Submitted in support of Wollersheim's Special Motion to Strike was the Declaration of Gerald Armstrong (Greene Decl. Ex. E) for which Scientology is asking this court to find Armstrong in contempt. By means of this declaration, Gerald Armstrong authenticated Scientology's written policy which directs the use of litigation to harass its critics and opponents. The policy states, in part:

> The purpose of the lawsuit is to harass and discourage rather than to win. [¶] The law can be used very easily to harass, and enough harassment on somebody who is simply on the thin edge anyway . . . will generally be sufficient to cause his professional decease. If possible, of course, ruin him utterly.

(Greene Decl., Ex. D at p. 10, fn 14.)

It is high irony that the very policy that Armstrong exposed in the declaration that he submitted in support of defendant Wollersheim's effort in Wollersheim II to vindicate his First

---

[3] Recognizing the potential chilling effect of lawsuits brought primarily for the purpose of curbing the valid exercise of the constitutional rights of petition, or of free speech, the California Legislature last year added section 425.16 to the Code of Civil Procedure. The purpose of the legislation is set forth in its first subsection: "The Legislature finds that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of free speech and petition for redress of grievances. The Legislature also finds and declares that it is in the public interest to encourage continued participation in matters of public significance and that this participation should not be chilled through abuse of the judicial process." (§ 425.16 (a).)

Amendment rights, is now being used in this Court in an attempt to harass Armstrong and chill his own First Amendment rights to petition and free speech. What is worse is that Scientology is shamelessly lying when it makes the claim that Armstrong's declaration transgresses the Sohigian injunction because, clearly, it does not.

Moreover, Armstrong is specifically allowed by the injunction to report to the authorities the criminal conduct of Scientology. What Armstrong testifies to in his declaration, aside from the foundational and background material, is his knowledge of Scientology's "using litigation to harass its opponents," "bludgeon[ing] the opposition into submission with a blizzard of meritless paper, motions, depositions, appeals, writs, Bar complaints, criminal complaints, perjured testimony, and other improper and abusive tactics," and its "attack strategy against judges who rule against it, which includes claims of bias and prejudice and frequently personal attacks," etc. This is exactly the sort of thing Judge Sohigian envisioned when he stated in his injunction that Armstrong was not to be prohibited from "properly reporting or disclosing to authorities criminal conduct of [the organization.]"

The merit in Armstrong' s disclosures in his Wollersheim declaration is borne out by the declaration of the Honorable James M. Ideman which he executed June 17. The Ideman declaration was filed in Religious Technology Center, Petitioner v. US District Court, Respondent, David Mayo, Real Part in Interest, No. 93-70281 in the 9th Cir. Ct. of Appeals. In particular, Judge Ideman's observation that Scientology views "litigation as war" and in furtherance of this view litigates with "evasions, misrepresentations, broken promises and lies." (Greene Decl, Ex. F, at p. 2) According to Judge Ideman, Scientology's litigation "is almost all puffery -- motions without merit or substance" (Ibid.) which it uses "to further punish the other parties with more years of expensive litigation." (Id. at p. 3)

As has most clearly been exposed by Scientology changing the position it has taken on appeal in the litigation at bar (see Part III.C., below), the instant order to show cause is all "puffery" and should not be countenanced by this court.

E. Armstrong Gave Scientology Notice That The OSC Is Without Merit And Frivolous

On Friday, July 23, 1993, Gerald Armstrong's counsel telecopied Laurie J. Bartilson and demanded that she not proceed with the OSC and explained why it was without merit. The letter stated, in full:

> In light of the fact that the injunction you claim my client to have violated does not prohibit Mr. Armstrong from providing declarations to private litigant defendants, and in light of the fact that your organization sued Mr. Wollersheim and Mr. Armstrong's perceived injunctional transgression is to have executed a declaration in support of defendant Wollersheim's motion to dismiss your suppressive litigation against him, any OSC that you seek on these grounds is without merit and frivolous.
>
> We will oppose your meritless OSC and seek sanctions for having to again deal with your spurious efforts at using litigation as a tool of repression.

(Greene Decl., Ex G.)

Prior to the commencement of the weekend, Scientology refused to provide its OSC application to Armstrong's counsel, and did not provide its application until late Sunday night, July 25. (Greene Decl. Exs. H, I.) Indeed, Armstrong provided his opposition to Scientology even before Scientology served its moving papers on him. (Greene Decl. at ¶ 10.)

By his counsel's letter dated July 30, 1993 to Ms. Bartilson, Armstrong reiterated his position that the order to show cause is frivolous, and that particularly because it contradicts the position that Scientology has taken in this case on appeal it is the proper subject of an estoppel. (Greene Decl. Ex. J.) Bartilson never responded to this point. (Greene Decl. ¶ 13.)

III. ARMSTRONG HAS NOT VIOLATED THE TERMS OF THE INJUNCTION

A. Armstrong's June 4, 1993, Declaration Does Not Fall Within The Scope Of Conduct Prohibited By The Sohigian Injunction

Contempt committed out of the presence of the court, as is alleged here, is an indirect contempt. As such it falls within the scope of Code of Civil Procedure section 1209 (5) which prohibits "disobedience of any lawful judgment, order, or process of such court." Since the injunction prohibits Armstrong only from voluntarily providing assistance to private litigant plaintiffs (i.e. those "intending to make, intending to press, intending to arbitrate, or intending to litigate a claim against the persons referred to in sec. 1 of the "Mutual Release of All Claims and Settlement Agreement" of December, 1986 regarding such claim or regarding pressing, arbitrating, or litigating it"), and since in Wollersheim II, Mr. Wollersheim is a defendant, Armstrong's declaration falls outside the scope of the injunction. Thus, Armstrong is guilty of neither transgression in spirit, nor violation in fact.

B. Armstrong's Declaration Is Protected By The Litigant's Privilege

The litigation privilege is derived from Civil Code section 47 (2). It states that a "privileged communication or broadcast is one made -[¶] 2. In any ... (2) judicial proceeding ..." In Silberg v. Anderson (1990) 50 Cal.3d 205, Justice Kaufman stated that the litigant's privilege is an essential prophylactic ingredient required to ward off corruption in litigation. He said:

> The principal purpose of section 47(2) is to afford litigants and witnesses [citation omitted] the utmost freedom of access to the courts without fear of being harassed subsequently by derivative tort [or contempt] actions. [citations omitted.]
>
> Section 47(2) promotes effectiveness of judicial proceedings by encouraging "open channels of communication and the presentation of evidence" in judicial proceedings. [citations omitted.] A further purpose of the privilege "is to assure utmost freedom of communication between citizens and public authorities whose responsibility is to investigate and remedy wrongdoing." [citations omitted.] Such open communication is "a fundamental adjunct to the right of access to judicial and quasi-judicial proceedings." [citation omitted.] Since the "external threat of liability is destructive of this fundamental right and inconsistent with the effective administration of justice" (citation omitted), courts have applied the privilege to eliminate the threat of liability for communications made during all kinds of truth-seeking proceedings: judicial, quasi-judicial, legislative and other official proceedings. . . Thus, witnesses should be free from the fear of protracted and costly lawsuits which otherwise might cause them to distort their testimony or refuse to testify altogether. [citations omitted]"

(Id. 50 Cal.3d at pp. 213-14.)

The privilege is absolute in nature. (Id. at p. 215) Therefore, any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; (4) that has some connection or logical relation to the action is completely privileged. (Id. at p. 212.) Armstrong's declaration was made in a judicial proceeding as a witness. His declaration was submitted to achieve the object of the litigation, specifically, to obtain an order striking Scientology's complaint in Wollersheim II as a violation of C.C.P. § 425.16. Armstrong's personal knowledge of Scientology's use of the legal system as a tool of harassment, ruin, and destruction has a logical connection to the resolution of Wollersheim II. Therefore, the Application for an Order to Show Cause falls within the scope of the litigant's privilege and on that basis should be denied as well.

C. Scientology Should Be Estopped From Seeking An Order Finding Armstrong In Contempt Because Scientology Previously Asserted That The Injunction Was Limited To Private Litigant Plaintiffs.

Under the doctrine of judicial estoppel "a party who has assumed a particular position in litigation may under some circumstances be estopped from taking an inconsistent position to the detriment of the other party." (Ng v. Hudson (1977) 75 Cal.App.3d 250, 258, 142 CR 69.) Judicial estoppel

> ". . . prevents a party who has assumed a particular position in a judicial proceeding to assume an inconsistent position to the prejudice of the adverse

> party in a subsequent proceeding involving the same parties and questions. . . The position must be clearly inconsistent so that one necessarily excludes the other. The application has also sometimes been limited by the requirement that to permit one party to change must be unjust to the other party."

(Coleman v. Southern Pacific Company (1956) 141 Cal.App.2d 121, 296 P.2d 386, 391.) Primarily, what is required is that the party against whom the estoppel would be invoked "plays 'fast and loose with the courts' by 'intentional self-contradiction . . . as a means of obtaining unfair advantage.'" (Id., 296 P.2d at 392.)

On April 20, 1993, in Case No. B 069450 in the Second District Court of Appeal Scientology filed its Respondent's Brief in opposition to Armstrong's appeal of the Sohigian Injunction. Therein, Scientology stated:

> The Superior Court was careful to delineate, in terms as precise as permitted by the English language, what Armstrong may do or not do under the terms of the injunction. Armstrong may not voluntarily assist a non-governmental party in litigating or arbitrating a claim against [scientology], or in preparing to litigate or arbitrate such claim. He may assist such a party in other respects, *i.e.*, in respects other than "regarding such claim." Likewise, he may accept subpoenas and testify, and he is under no obligation to engage in "physical resistance, obstructive tactics, or flight" to avoid service of subpoenas. He may engage in employment as a paralegal, so long as he does not assist with respect to actual or potential litigation or arbitration claims against [scientology]. And, of course, he may report criminal activity to the appropriate authorities. [underlining added.]

(Greene Decl. Ex K, Respondent's Brief, at pp. 33-34.)

The ludicrousness of Scientology's order to show cause is underscored by two salient facts. One, Armstrong's execution of a declaration in support of defendant Wollersheim did not violate the terms of the injunction, the prohibitive language of which is specifically limited to those who litigate "claims against" Scientology. Two, in its argument on appeal Scientology unequivocally adopted the interpretation that the injunction prohibits Armstrong from the execution of declarations on behalf of those litigating "claims against" Scientology.

Therefore, Scientology is estopped from taking the position that Armstrong's execution of a declaration on behalf of someone it is suing violates the injunction. Scientology has specifically acknowledged that Armstrong is prohibited from executing declarations on behalf of those who are prosecuting a claim against Scientology. It cannot now in an exercise of expedience turn around and take a contrary position.

IV. MONETARY SANCTIONS SHOULD BE AWARDED AGAINST THE CHURCH OF SCIENTOLOGY INTERNATIONAL AND AGAINST BOWLES AND MOXON AND LAURIE J. BARTILSON

Pursuant to Code of Civil procedure section 128.5 the court has the power to order counsel and parties to pay the reasonable expenses, including attorney's fees, incurred by the other party "as a result of bad-faith actions or tactics, which are frivolous..." Frivolous means (a) "totally and completely without merit" or (b) "for the sole purpose of harassing an opposing party." (C.C.P. § 128.5 (b)(2).)

Upon reading the Sohigian injunction, any reasonable attorney would conclude that the terms of the injunction telling Armstrong not to voluntarily assist litigants adverse to Scientology was limited to private litigant plaintiffs only. (Karawasky v. Zachay (1983) 146 Cal.App.3d 679.)

As a separate and distinct basis for the recovery of fees and costs, Armstrong relies on the attorney fees provision found is Paragraph 20 of the contract upon which the injunction is based. In pertinent part Paragraph 20 states, "In the event that any party to this Agreement institutes any action to preserve, to protect or to enforce any right or benefit created hereunder, the prevailing party in any such action shall be entitled to the costs of suit and reasonable attorney's fees." (Exhibit B to OSC Application.) Since a contempt proceeding is clearly an action to enforce the settlement contract, Armstrong is entitled to an award of attorney's fees and costs should the order to show cause be discharged.

The language of the injunction refers only to those bringing a claim against Scientology. Scientology brought a claim against Lawrence Wollersheim. Therefore, Armstrong's participation in Wollersheim II as a witness is beyond the injunction's scope. This renders the order to show cause application patently devoid of all merit.

In opposing the application for the order to show cause, and the order to show cause, Armstrong's counsel expended 6 hours in drafting the papers. Travel and in-court time are anticipated to be 7 hours. The fees said counsel charges in such litigation are calculated at the rate of $200.00 per hour totalling $2,600.00. Paralegal time, valued at $55.00 per hour, required 4 hours for document assembly. Copy costs total $213.50 for 854 copies at $.25 per copy and 29 fax sheets at 2.00 per sheet. Therefore, the total fees and costs incurred in opposing the application and order to show cause are 3,081.50.

V. CONCLUSION

Gerald Armstrong respectfully submits that Scientology's Order to Show Cause re Contempt should be rejected. The injunction Scientology accuses Armstrong of violating does not prohibit him from voluntarily submitting declarations in support of private litigant defendants, particularly when such a defendant is the subject of Scientology's engine of legal destruction. Moreover, Armstrong's participation is protected by the litigant's absolute privilege. Finally, Scientology's recognition that the injunction is limited to private litigant plaintiffs should estop it from trying to expand the scope of the injunction beyond the express language thereof.

Therefore, the application should be soundly rejected, and fees and costs charged to Scientology.

DATED: September 4, 1993

By: ______________________
FORD GREENE and PAUL MORANTZ
Attorneys for Defendant
GERALD ARMSTRONG

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: (1) DEFENDANT ARMSTRONG'S MEMORANDUM IN OPPOSITION TO AN ORDER TO SHOW CAUSE RE CONTEMPT; REQUEST FOR MONETARY SANCTIONS; (2) DEFENDANT ARMSTRONG'S MEMORANDUM IN OPPOSITION TO AN ORDER TO SHOW CAUSE RE CONTEMPT; REQUEST FOR MONETARY SANCTIONS.

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew Wilson, Esquire
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

LAURIE J. BARTILSON, ESQ.
Bowles & Moxon
6255 Sunset Boulevard, Suite 2000
Los Angeles, California 90028

PAUL MORANTZ, ESQ.
P.O. Box 511
Pacific Palisades, CA 90272

[x] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[ ] (Personal) I caused said papers to be personally service on the office of opposing counsel.

[x] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: September 4, 1993

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO
235 Montgomery Street
Suite 450
San Francisco, California 94104
(415) 391-3900

Laurie J. Bartilson
BOWLES & MOXON
6255 Sunset Boulevard, Suite 2000
Hollywood, CA 90028
(213) 661-4030

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

FILED
LOS ANGELES SUPERIOR COURT
SEP 10 1993
JAMES H. DEMPSEY, CLERK
BY N. NAVARRO DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

157680

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG, DOES 1 through 25, inclusive,

Defendants.

CASE NO. BC 052395

LODGING OF EXHIBIT D: WHAT IS SCIENTOLOGY?

FILED
NOV 16 1994
HOWARD HANSON
MARIN COUNTY CLERK
BY

TO DEFENDANTS AND THEIR ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that Plaintiff Church of Scientology International has lodged with the Court the book, "What Is Scientology?" as Exhibit D to Plaintiff's Response to Defendants's Opposition to Order to Show Cause Why Gerald Armstrong Should Not Be Held in Contempt of Court.

Dated: September 10, 1993

Respectfully submitted,

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO

BOWLES & MOXON

By: Laurie J. Bartilson
Laurie J. Bartilson

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 235 Montgomery Street, Suite 450, San Francisco, California 94104.

On September 10, 1993, I served the foregoing document described as PLAINTIFF'S RESPONSE TO DEFENDANTS' OPPOSITION TO ORDER TO SHOW CAUSE WHY GERALD ARMSTRONG SHOULD NOT BE HELD IN CONTEMPT OF COURT; REQUEST FOR SANCTIONS AGAINST GERALD ARMSTRONG AND FORD GREENE on interested parties in this action.

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed as follows:

FORD GREENE
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

[ ] BY MAIL

[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[ ] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on ________ at Los Angeles, California.

[X] **(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressees.

Executed on September 10, 1993 at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Print or Type Name	Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Los Angeles, CA 90028

On September 10, 1993, I served the foregoing document described as PLAINTIFF'S RESPONSE TO DEFENDANTS' OPPOSITION TO ORDER TO SHOW CAUSE WHY GERALD ARMSTRONG SHOULD NOT BE HELD IN CONTEMPT OF COURT; REQUEST FOR SANCTIONS AGAINST GERALD ARMSTRONG AND FORD GREENE on interested parties in this action,

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed as follows:

PAUL MORANTZ
P.O. Box 511
Pacific Palisades, CA 90272

[X] BY MAIL

[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on September 10, 1993 at Los Angeles, California.

[ ] **(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressees.

Executed on ________________, at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Gerald Hanlon
Print or Type Name

Gerald Hanlon
Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO
235 Montgomery Street
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(415) 391-3900

Laurie J. Bartilson
BOWLES & MOXON
6255 Sunset Boulevard, Suite 20[illegible]
Hollywood, California 900[illegible]8 74[illegible]
(213) 953-3360

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

FILED
NOV 16 1994
HOWARD HANSON
MARIN COUNTY CLERK
BY

FILED
LOS ANGELES SUPERIOR COURT
SEP 10 1993
JAMES H. DEMPSEY, CLERK
BY N. NAVARRO, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

157680

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG; THE GERALD ARMSTRONG CORPORATION, a California for-profit corporation; DOES 2 through 25, inclusive, Defendants.	CASE NO. BC 052395 PLAINTIFF'S RESPONSE TO DEFENDANTS' OPPOSITION TO ORDER TO SHOW CAUSE WHY GERALD ARMSTRONG SHOULD NOT BE HELD IN CONTEMPT OF COURT; REQUEST FOR SANCTIONS AGAINST GERALD ARMSTRONG AND FORD GREENE
AND RELATED CROSS-COMPLAINT	DATE: September 14, 1993 TIME: 9:30 a.m. DEPT: 86 DISCOVERY CUT-OFF: None MOTION CUT-OFF: None TRIAL DATE: Vacated

Gerald Armstrong's sole defense to his contemptuous disregard of this Court's preliminary injunction is that he gave a declaration to a "defendant" litigant instead of a "plaintiff" litigant. Armstrong ignores that the litigant -- Larry Wollersheim -- has been litigating claims against the Church **as a plaintiff** since 1980, and that the action in which the declaration was filed seeks to set aside a judgment in Wollersheim's action due to the trial judge's undisclosed bias, and seeks no relief at all from Wollersheim.

It is undisputed by Armstrong that: (1) He was fully aware of this Court's May 28 Order, which prohibits him from, inter alia "voluntarily assisting any person (not a governmental organ or entity) arbitrating or litigating a claim against" the entities and individuals listed in the Settlement Agreement, including the Church of Scientology of California; (2) On or about June 4, 1993, he prepared and signed a lengthy declaration attacking the Church of Scientology of California and delivered it to Larry Wollersheim, and/or Wollersheim's attorneys; and (3) Larry Wollersheim is presently engaged in litigation against the Church of Scientology of California.

Armstrong argues, however, that his conduct was not prohibited by the May 28 injunction because Wollersheim is a litigant defendant, and not a litigant plaintiff, vis-a-vis the Church of Scientology of California. It is difficult to imagine a more misleading argument. Attached hereto as Exhibit A is a copy of a substitution of attorney, executed by Ford Greene on August 6, 1993. On that date, Mr. Greene became attorney of record in the Court of Appeal for Larry Wollersheim with papers bearing the caption, "**LARRY WOLLERSHEIM, Plaintiff and Respondent, vs. CHURCH OF SCIENTOLOGY OF CALIFORNIA, Defendant and Appellant.**" [Id, p. 1, emphasis supplied.] As both Armstrong and Greene are obviously aware[1], Wollersheim has been a **plaintiff** pursuing a claim against the Church of Scientology of California since July 28, 1980 [Ex. B, Complaint, Wollersheim v. Church of Scientology of California, LASC No. C 332 027.] Trial was had in this courthouse from February to July, 1986. Appeals in that action commenced on September 29, 1986, and are still not over -- as graphically demonstrated by Ford Greene's substitution into the case as Wollersheim's counsel of record two months after Armstrong provided Wollersheim with his declaration [Ex. A].[2]

The action which Armstrong characterizes as Wollersheim II[3] seeks equitable relief from the judgment in Wollersheim v. Church of Scientology of California. It is not litigation levelled "against" Larry Wollersheim: it is directed to recently-discovered evidence that the 1986 trial judge harbored an undisclosed bias and prejudice against the Church of Scientology of California during the 5-month trial, rendering the judgment therein void. [Ex. C to Ford Greene Declaration, paras. 5 - 22.] On July 2, 1993, during a hearing at which Gerald Armstrong was present, Judge Kakita found no merit in Wollersheim's "special motion to strike," and ordered the action stayed pending the final resolution of Wollersheim v. Church of Scientology of California. [Exhibit C, Declaration of Laurie J. Bartilson, ¶ 2 and Exhibit 1 thereto.]

---

[1] Armstrong has been employed as Greene's paralegal since August, 1991. Discovery has shown that he regularly works for Greene or, inter alia, cases involving Scientology churches. See, Motion for Preliminary Injunction and evidence filed in support thereof.

[2] Armstrong and Greene are thus plainly aware of Wollersheim's status as a plaintiff litigant against the Church of Scientology of California, Greene even appearing of record for Wollersheim the plaintiff, but have nonetheless chosen to argue falsely to this Court that Wollersheim is only a litigant defendant. This is a frivolous tactic imposed solely for the purposes of delay pursuant to CCP §128.5. CSI accordingly requests an award of expenses and attorneys fees in the amount of $3,215.00. [Ex. C, Declaration of Laurie J. Bartilson.]

[3] Church of Scientology of California v. Wollersheim, LASC No. BC 074 875.

The declaration which Armstrong admits he provided to Wollersheim provided no information relevant to Wollersheim's case or to Wollersheim II. Indeed, Armstrong has no percipient knowledge of any facts which were at issue in those matters. Rather, Armstrong's declaration, which bears no case caption, is an "all-purpose" lengthy diatribe falsely charging his former religion with all manner of wrong-doing and evil intention [Ex. J to Moving Papers.] There is no evidence in the declaration itself that articulates for what purpose it was provided to Wollersheim or his attorneys; Armstrong obviously had no control over how those litigants chose to use it. That it made its first appearance in Wollersheim II hardly excuses its existence in the hands of Wollersheim and his counsel: the injunction prohibits Armstrong from voluntarily assisting them. He assisted them by giving them his declaration.

The remainder of Armstrong's response consists of transparent slams directed at CSI and its counsel. None of it is accurate, relevant or helpful to this Court. And none of it excuses in any fashion Armstrong's contemptuous, repeated disregard of this Court's May 28 Order.[4] It is not CSI or its counsel that Armstrong has decided to ignore and disobey. It is the Los Angeles Superior Court.

---

[4] Nonetheless, in an effort to counteract at least some of the venomous insult that Armstrong has heaped on CSI and the millions of Scientology parishioners world-wide, CSI provides to this Court, as Exhibit D, a copy of the book, What is

On August 15, 1993, in a letter directed to CSI's counsel, Armstrong wrote,

> You have noted, as I've noted above, that my breaching of the [settlement] agreement has continued unabated since 1990. It is my duty, therefore, to continue that breach unabated until the [settlement] agreement is rescinded and no longer exists to be breached. This letter thus also serves to advise you and your client that I am continuing unabated. . . .If I am not heard to be breaching the agreement at any moment, I have not stopped doing so, but am just between words or breaching in a whisper. Even in my sleep, though I may not be somniloquizing, I am in every instant breaching the agreement. . . .

[Ex. C, Declaration of Laurie J. Bartilson, and Exhibit 2 thereto, p. 4.]

This contemptuous response to the 1986 settlement agreement (pursuant to which he happily accepted more than $518,000.00) and this Court's orders are precisely why Armstrong has been ordered to show cause herein. CSI seeks this Court's help in demonstrating to Armstrong that he will, indeed, be held accountable for his own wrongful actions, and that they must cease.

Dated: September 10, 1993

Respectfully submitted,

BOWLES & MOXON

By: ______________________
Laurie J. Bartilson

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO

Scientology?, which should accurately answer any questions that Armstrong's bizarre diatribes have raised.

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

2d Civil No. B023193

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

LARRY WOLLERSHEIM,
Plaintiff and Respondent,

vs.

CHURCH OF SCIENTOLOGY OF CALIFORNIA,
Defendant and Appellant,

SUBSTITUTION OF ATTORNEY

Appeal from the Superior Court of the State of California
For the County of Los Angeles
Ronald Swearinger, Judge
Case No. C 332 827

Ford Greene
State Bar No. 107601
HUB LAW OFFICES
711 Sir Francis Drake Blvd.
San Anselmo, California 94960
(415) 258-0360

Attorney for Respondent
LARRY WOLLERSHEIM

Ford Greene, Esquire
California Bar No. 107601
HUB LAW OFFICES
711 Sir Francis Drake Boulevard
San Anselmo, California 94960-1949
Telephone: (415) 258-0360

Attorney for Respondent
LAWRENCE WOLLERSHEIM

COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION

LAWRENCE WOLLERSHEIM,

Plaintiff and Respondent,

vs.

CHURCH OF SCIENTOLOGY OF CALIFORNIA, et al.,

Defendant and Appellant.

No. B023193

SUBSTITUTION OF ATTORNEY

Plaintiff and Respondent LAWRENCE WOLLERSHEIM hereby substitutes Ford Greene, Esquire, 711 Sir Francis Drake Boulevard, San Anselmo, California 94960-1949, Telephone (415) 258-0360 as attorney of record in the place and stead of Lawrence Wollersheim, in pro per, appearing.

DATED: 8/2/93

LAWRENCE WOLLERSHEIM

///

I consent to the above substitution.

DATED: 8/2/93

LAWRENCE WOLLERSHEIM

I accept the above substitution.

DATED: 8/6/93

HUB LAW OFFICES

By

FORD GREENE

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: SUBSTITUTION OF ATTORNEY

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California: SEE ATTACHED SERVICE LIST

[X]	(By Mail)	I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.
[ ]	Personal (Service)	I caused such envelope to be delivered by hand to the offices of the addressee.
[X]	(State)	I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
[ ]	(Federal)	I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

DATED: August 6, 1993

Wollersheim v. Scientology Service List

Eric M. Lieberman, Esq.
RABINOWITZ, BOUDIN, STANDARD, KRINSKY & LIBERMAN
740 Broadway, Fifth Floor
New York, New York, 10003

MICHAEL L. HERTZBERG
740 Broadway, Fifth Floor
New York, New York, 10003

Lawrence E. Heller, Esq.
TURNER, GERSTENFELD, WILK, TIGERMAN & HELLER
8383 Wilshire Boulevard
Beverly Hills, California 90211

Kendrick L. Moxon, Esq.
BOWLES & MOXON
6255 Sunset Boulevard, Suite 2000
Hollywood, California 90028

COUNTY CLERK
Los Angeles Superior Court
111 North Hill Street
Los Angeles, California 90012

1916

1

(SPACE BELOW FOR FILING STAMP ONLY)

GREENE, O'REILLY, AGNEW & BROILLET
A LAW CORPORATION
1122 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90017
(213) 482-1122
(213) 482-1350

Attorneys for PLAINTIFF
LARRY WOLLERSHEIM

FILED
JUL 2 8 1980
John J. Corcoran, County Clerk
Carol A. Burge
BY CAROL A. BURGE, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

LARRY WOLLERSHEIM,

Plaintiff,

-vs-

CHURCH OF SCIENTOLOGY OF CALIFORNIA, A Corporation, CHURCH OF SCIENTOLOGY OF FLORIDA, A Corporation; L. RON HUBBARD, An Individual; CHURCH OF SCIENTOLOGY, A Corporation; DOES 1 through 200, inclusive,

Defendants.

CASE NO. C332027

COMPLAINT FOR DAMAGES

(FRAUD, INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, NEGLIGENT INFLICTION OF EMOTIONAL SHOCK)

COMES NOW Plaintiff, LARRY WOLLERSHEIM, and for causes of action against Defendants, and each of them, Complains and alleges as follows:

GENERAL ALLEGATIONS

1. That the true names and/or capacities, whether individual, corporate, associate or otherwise of Defendants,

#1

DECLARATION OF LAURIE J. BARTILSON

I, LAURIE J. BARTILSON, hereby depose and state:

1. I am an attorney, licensed to practice law in the State of California. I am a partner in the law firm of Bowles & Moxon and am counsel of record for plaintiff and cross-defendant Church of Scientology International ("CSI") in the case of Church of Scientology International v. Armstrong, LASC No. BC 052395. I have personal knowledge of the matters set forth herein and, if called upon to do so, could and would competently testify thereto.

2. On July 2, 1993, I was present for plaintiff Church of Scientology of California at a hearing in Department 14, Los Angeles Superior Court, in the case of Church of Scientology of California v. Wollersheim, LASC No. BC074815. After listening to argument, Judge Kakita denied Wollersheim's "special" motion to strike, finding that CCP §425.16 was not applicable to the case. Judge Kakita also stayed all further proceedings in that action until after a final adjudication was reached in Wollersheim v. Church of Scientology of California, LASC No. C 332 027. Attached hereto as Exhibit 1 is a true and correct copy of the notice of that ruling.

3. Gerald Armstrong was present in Department 14 on July 2, 1993, and throughout the hearing. The judge issued his ruling from the bench. Thereafter, I observed Gerald Armstrong in the hallway outside the courtroom, talking with a man who identified himself to me as a reporter.

4. On August 15, 1993, Gerald Armstrong sent a letter to my co-counsel in this action, Andrew Wilson. A true and correct

copy of that letter is attached hereto as Exhibit 2. The letter bears Armstrong's distinctive signature, which is well known to me.

5. I have expended 5 hours in the preparation of plaintiff's application for an order to show cause, 1 hour attending the hearing on that application, and 2 hours in preparing the response to Armstrong's frivolous opposition. I expect to spend at least another 2 hours preparing for and attending the hearing on September 14, 1993. My normal billing rate is $185.00 per hour. Because I will be testifying at the hearing, my co-counsel, Andrew Wilson, will also be preparing for and attending the hearing. I expect that he will expend 3 hours preparing for and attending the hearing, together with an additional 4 hours of travel time from his San Francisco office. Mr. Wilson's billing rate is $195.00 per hour. Accordingly, the cost to my client for obtaining this Order to Show Cause and responding to Armstrong's meritless defense will be $3,215.00.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed this 10th day of September, 1993 at Los Angeles, California.

Laurie J. Bartilson

LAURIE J. BARTILSON

ORIGINAL FILED
JUL 07 1993
LOS ANGELES
SUPERIOR COURT

Laurie J. Bartilson
BOWLES & MOXON
6255 Sunset Blvd.
Suite 2000
Hollywood, CA 90028-7421
(213) 661-4030

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY OF CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF CALIFORNIA, a California non-profit religious corporation,

Plaintiff,

vs.

LARRY WOLLERSHEIM,

Defendant.

CASE NO. BC074815

NOTICE OF RULING

NO TRIAL DATE
NO MOTION CUTOFF
NO DISCOVERY CUTOFF

PLEASE TAKE NOTICE that on July 2, 1993, defendant Larry Wollersheim, Jr.'s Motion to Strike came on for hearing before the Honorable Edward Y. Kakita, Superior Court Judge, in Department 14 of the above-entitled court. Defendant was represented by Mark Goldowitz and Daniel Leipold, and plaintiff was represented by Laurie J. Bartilson. Upon consideration of the motion, the papers filed by the parties, and the argument of counsel, the Court ruled as follows:

1. The Motion to Strike is DENIED. Code of Civil Procedure Section 425.16 is not applicable to this case.

2. Further, all proceedings in this action are STAYED pending final adjudication of the appeal presently pending in the

case of Wollersheim v. Church of Scientology of California, LASC No. C 332 027.

Dated: July 6, 1993

BOWLES & MOXON

By: ______________________
Laurie J. Bartilson

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY OF
CALIFORNIA

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Hollywood, CA 90028.

On July 6, 1993, I served the foregoing document described as NOTICE OF RULING on interested parties in this action as follows:

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] a true copy thereof in a sealed envelope addressed as follows:

Daniel A. Leipold
HAGENBAUGH & MURPHY
701 S. Parker St.
Suite 8200
Orange, CA 92668

Mark Goldowitz
1611 Telegraph Avenue
Suite 1200
Oakland, CA 94612

[X] BY MAIL

[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

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Executed on July 6, 1993, at Los Angeles, California.

[ ] **(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressee.

Executed on ______________, at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Janet Vair

______________________ Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

August 15, 1993

Andrew H. Wilson, Esquire
Wilson, Ryan & Campilongo
235 Montgomery Street
Suite 450
San Francisco, CA 94105

BY FAX (415)954-0938

Re: **CSI v. GERALD ARMSTRONG;**
MICHAEL WALTON;
TEE-GEE-ACK,
Marin Superior Court No. 157680

Dear Mr. Wilson:

The above-referenced lawsuit has become Armstrong IV, and CSI v. Gerald Armstrong and Tee-Gee-Ack, LA Superior Court No. BC 084642, is Armstrong III. Armstrong II and I you and I and the courts are all clear about already.

What you have done in filing this lawsuit which you know to be bogus is dishonorable. I am preparing a litigation resolution, but it is a huge, month-consuming task, and I thought maybe there was still an opportunity for something different from litigation which could end it right away. As you know this is what I've tried to do for over 11 years, without, as you also know, much success. Nevertheless, I will attempt again an appeal for sense, so am writing you, this lawsuit's executioner, this letter.

So far, because nobody has come forward to say what I say I am having to say it myself. Appealing first to your fiscal psyche (you wouldn't argue that you're in it for the money, right?) I have spent some forty-one hours on IV, so let's say, $2255.00, and $400.00 costs. I'm not sure what Michael Walton's fees and costs are, but I'm fairly sure that if you decided to dismiss the complaint and withdraw the lis pendens immediately he would not object, and would be, I think, fair, in not only fees and costs but damages. An apology would be helpful, but I doubt that he'd even ask for one, let alone insist. In any case, now, as always, is certainly the time, if sense is to be a factor in this senseless lawsuit.

Having said that, I should acknowledge that I am not unaware of the fact that you have a monstrous monetary motivation to have the attacks on your client's "enemies" go on the rest of your career. There is some risk in this to your money mountain, of course, because a malicious prosecution action becomes so obvious in this litigation's solution to itself. Do not therefore, transfer any of your assets from this day forward, because there exists from the time of your first threat in the Armstrong II depositions, and, for your client, from December 6, 1986, a claim, regarding which I urge you to transmit a copy of this letter to your insurance carrier. I also urge you to divulge to your carrier all of the facts known by you to underlie not only the Armstrong IV complaint, but II and III, which you have also prosecuted maliciously. If you didn't have a clue about what you were up to before this, please let this be clear notice. While you're at it, be sure to not withhold all the statements you're aware of that I've made that I represent to be fact, and which I say underlie I through IV. If I handled your insurance I would sure tell you to either dismiss IV, or get out of it if your client refuses to allow you to; and the same with II and III. If you're not depending on insurance, but your client's promise to pay for your defense and damages, I suppose I'd have to admit that to prolong your career you'd want to generate as many malicious lawsuits as humanly possible.

There is, then, the matter of your career, short, long or prolonged. I may have a different idea from yours about lawyers, good ones and bad. It's easy to see, in order to stay blind, that making a mess of money, by any means, makes a lawyer good. To me, money and goodness are, in all arguable relationships, unrelated. It is honesty, fairness, discipline, sense and support for those things in justice's system that make goodness in lawyers. Some good lawyers are rich, some are poor. Some bad lawyers are rich, and some again are poor, but all bad lawyers are dishonest, unfair, undisciplined and dense, and it's they who give their profession the reputation it shouldn't deserve. As I said, however, you may have a different view, perhaps something more Hubbardian, of a career in goodness or badness.

Please do not kid yourself that because I have not been destroyed utterly, as Hubbard ordered in his basic litigation policies, your lawsuits are not terrifying, and do not profoundly distress me. Only a madman, even in this litigious land, is not threatened by being named a defendant in any lawsuit to which our courts give numbers and their awful power. Only Rip Van Winkle would not recognize your client as the most vicious litigation machine this land has ever beheld. I am neither mad nor Rip.

You and I both know that your lawsuits are frivolous; but please also realize that I am aware that you know that the fact of their frivolousness does not diminish their danger. In fact, as we both know, their frivolous nature adds to the threat. The organization, as you know, because you know of intel ops going down all the time and sign your name to much of the frivolity, uses litigation to cover, divert attention from, and render incredible or plausibly deniable what's really going on: its secret war of secret meetings, secret orders, secret operatives, secret files, secret accounts, of ambushes, assaults, arsenals and abominations. The latest frivolous flurry - Armstrong III and IV, and their now growing case files - I view as a render-incredible operation. Your client's position would be, "Why would we kill Armstrong; after all we had just sued him and expected to get a judgment against him for millions of dollars?" If you consider in your assisting of your client that it is too rational or controlled to engage in something as unseemly as assassination, please be on notice that it is neither.

You know me. You've deposed me. You've seen me in courtrooms and hallways. You've read my letters, and either read dozens of my deposition transcripts and volumes of my declarations, or you've deliberately not read them in order for rotten reasons to keep yourself ignorant. You promised to ask your client, David Miscavige, to return the manuscript he had stolen from my car. You've read my IRS book manuscript. You know of operations, PIs, intel, lies, assaults, a list of lawfirms, lawsuits, lawyers and losses as long as your leg. You know that thousands (the org has been saying six million for twenty years; but in any case plenty) of persons around the world are available as perjurers, paralegals or pawns to assist you to assist your client in its litigation goals.

The obvious goals of the II, III and IV litigation package are to silence me and take revenge for my refusal to be silenced. In furtherance of those goals, in Armstrong IV you seek to take away my friend Michael Walton's house, cause him and his family trouble, and in all your lawsuits to cause me trouble, and attack Tee-Gee-Ack's assets and cause it trouble. The organization has other goals in the Armstrong litigation that really are intended to feed its insatiable intelligence appetite, which it camouflages with the uproariously transparent label of "legitimate discovery." It should be clear after three years (using your also uproarious date of February, 1990), three lawsuits, three shots at contempt, more than three media mentions, at least three more books on the subject, and a screen play, that I cannot legally be silenced. Your client's waivers of any right or standing to enforce the now unmercifully silly settlement agreement are strewn along the litigation's length. That aspect of your war with me has long since been lost. The courts of this country have not acceded to your demands that I be silenced, and now they never will.

Without a prayer of achieving its litigation goal of silence, the organization is left with only naked revenge for my rejection of its suppression. Our courts, as you might remember, have often acted to prevent their participation in litigation for revenge; often enough, I would think, to give pause to anyone but the completely insane who would contemplate their use for that base purpose. Revenge itself, a basic Hubbardian policy, although not an invention for which either his estate or the organization holds the patent, is what makes the completely insane completely insane and certainly insane enough to blind themselves to how crazy revenge really is. It can never accomplish its goal, has no real effect, but since its practitioners consider its effects real (otherwise why indulge in it) it does have the apparent effect of rendering them crazier and crazier. That effect is apparent in the 4 Armstrong cases; the practitioners therein have become crazier and crazier.

There is a legal point, concerning which revenge admittedly may have blinded you, that, even if you decide not to dismiss or exit Armstrong IV, I request that you respond to immediately. You have claimed that:

> "Beginning in February, 1990, and continuing unabated until the present, Armstrong has breached the Agreement wilfully and repeatedly, including, inter alia, the provisions of Paragraph 7(D) of the Agreement which require Armstrong to pay plaintiff liquidated damages for each such breach." (Complaint, p. 7, para. 22)

The settlement agreement states at page 8, para. 7(D) that the organization "would be entitled to liquidated damages in the amount of $50,000 for each such breach." If my breaching of the agreement has continued unabated, there could have been but one breach from February, 1990 forward. Your breaking of that big, bountiful and, as you say, unabated, breach into artificial parts is a contrivance to pad your client's damages, which is, funnily enough, frigging fraud; and I would appreciate your addressing of that damage padding fraud in your response to this letter.

I have written you and Ms. Bartilson before on the subject of mitigation of damages, and I have felt that it is something you have both not well understood, but I will try again here. I have a duty to mitigate damages, and I am damaged each time you tack on another 50 G's for every artificial part into which you divide my life. You have also noted, as I've noted above, that my breaching of the agreement has continued unabated since 1990. It is my duty, therefore, to continue that breach unabated until the agreement is rescinded and no longer exists to be breached. This letter thus also serves to advise you and your client that I am continuing unabated. Please also advise your client to not waste its victims "donations" sending around its camera-toting PIs to try to catch me in an instant when I am doing something other than my unbroken breach. If I am not heard to be breaching the agreement at any moment, I have not stopped doing so, but am just between words or breaching in a whisper. Even in my sleep, though I may not be somniloquizing, I am in every instant breaching the agreement. Please be assured that it is my intention to thus do without ceasing whatever I can to mitigate my damages; and your client's. Even a fool would see that it would be stupid of me to belay my thus far unabated breach, because your client will just do something, as it has done, also relatively unabatedly, from December, 1986 through present time, to force, goad, trick or trap me into a second breach. Obviously the resolution lies in what I've been saying for years: rewrite the settlement agreement.

If you haven't sensed that your client is paying you to give it only bad advice, please do so now. If you're being paid to not advise your client, be advised that practically anyone (even I) can give it the same advice for practically nothing. I actually do have some advice for both you and your client. Please, look into your hearts and truly question the sense of what you do. If you have trouble looking into your hearts, give me a call because I can help.

And that brings us to the non-litigation resolution of your client's problems, which is really the purpose of this letter. If I really desired to foment litigation, as you repeat so religiously, would I honestly have been so dedicated through all these years to having your client realize the futility of litigation as the solution to its problems? The fact that it sees litigation as a solution is really why its problems persist. Honest, open communication would work, but your client refuses to try it, opting instead for the avoidance of communication by hiding behind layers of lawyers and litigation. Its communications not screened through its lawyers are dishonest and secret. Its leaders hide behind their "own" lawyers and layers of lies and should not be its leaders because its people deserve in their leaders courage, honesty and openness. So again, I extend to you and to your client the invitation to meet with me honestly and openly for the purpose of communication towards the resolution of our conflicts. I will wait until August 17 before I do anything more with this letter. I'm now up to 45 1/2 hours and working hard.

Please look in your hearts and see what you find there.

With a prayer for peace, I remain, yours sincerely,

G.

Gerald Armstrong
715 Sir Francis Drake Boulevard
San Anselmo, CA 94960
(415)456-8450

Hub Law Offices
711 Sir Francis Drake Boulevard
San Anselmo, CA 94960
(415)258-0360
Fax 456-5318

EXHIBIT D, THE BOOK WHAT IS SCIENTOLOGY?

HAS BEEN LODGED SEPARATELY WITH THE COURT.

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 235 Montgomery Street, Suite 450, San Francisco, California 94104.

On September 10, 1993, I served the foregoing document described as LODGING OF EXHIBIT D: WHAT IS SCIENTOLOGY? on interested parties in this action.

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed as follows:

FORD GREENE
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

[ ] BY MAIL

[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[ ] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on ________ at Los Angeles, California.

[X] **(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressees.

Executed on September 10, 1993 at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Print or Type Name

Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Los Angeles, CA 90028

On September 10, 1993, I served the foregoing document described as LODGING OF EXHIBIT D: WHAT IS SCIENTOLOGY? on interested parties in this action,

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed as follows:

PAUL MORANTZ
P.O. Box 511
Pacific Palisades, CA 90272

[X] BY MAIL

[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

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[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

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Gerald Hanlon | Gerald Hanlon
Print or Type Name | Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

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CHURCH OF SCIENTOLOGY INTERNATIONAL

FILED
NOV 16 1994
HOWARD HANSON
MARIN COUNTY CLERK
BY DEP.

FILED
LOS ANGELES SUPERIOR COURT
APR 05 1994
EDWARD M. KRITZMAN, CLERK
C. Coleman
BY C. COLEMAN, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation;

Plaintiff,

vs.

GERALD ARMSTRONG; THE GERALD ARMSTRONG CORPORATION, a California corporation; DOES 1-25 INCLUSIVE

Defendants.

CASE NO. BC 052395
157680

VERIFIED SECOND AMENDED COMPLAINT FOR DAMAGES AND FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF FOR BREACH OF CONTRACT

Plaintiff, by its attorneys, Wilson, Ryan & Campilongo and Bowles & Moxon, for its Complaint, alleges:

NATURE OF THE ACTION

1. In violation of the express terms and spirit of a settlement agreement ("the Agreement") entered into in December, 1986, defendant Gerald Armstrong ("Armstrong") has embarked on a deliberate campaign designed to aid plaintiff's litigation adversaries, breach the confidentiality provisions of the

Agreement, and foment litigation, hatred and ill-will toward plaintiff.

2. More than seven years ago, plaintiff Church of Scientology International ("CSI") entered into the Agreement with Armstrong, on its own behalf and for the benefit of numerous third-party beneficiaries. The Agreement provided for a mutual release and waiver of all claims arising out of a cross-complaint which defendant Armstrong had filed in the case of Church of Scientology of California v. Gerald Armstrong, Los Angeles Superior Court No. C 420153. Armstrong, a former Church member who sought, by both litigation and covert means, to disrupt the activities of his former faith, displayed through the years an intense and abiding hatred for the Church, and an eagerness to annoy and harass his former co-religionists by spreading enmity and hatred among members and former members. Plaintiff sought with the Agreement to end all of Armstrong's covert activities against it, along with the litigation itself. For that reason, the Agreement contained carefully negotiated and agreed-upon confidentiality provisions and provisions prohibiting Armstrong from fomenting litigation against plaintiff by third parties. These provisions were bargained for by plaintiff to put an end to the enmity and strife generated by Mr. Armstrong once and for all.

3. This action arises out of deliberate and repeated breaches by Armstrong of these and other express provisions of the Agreement. Although plaintiff fully performed all of its obligations under the Agreement, Armstrong never intended to keep his part of the bargain and maintains that he considered the

referenced provisions to be unenforceable ab initio. As soon as he finished spending the money he extracted from plaintiff as the price of his signature, Armstrong began a systematic campaign to foment litigation against plaintiff by providing confidential information, copies of the Agreement, declarations, and "paralegal" assistance to litigants actively engaged in litigation against his former adversaries. Although plaintiff has repeatedly demanded that Armstrong end his constant and repeated breach of the provisions of the Agreement, Armstrong appears to delight in renewing his annoying and harassing activities, admitting to them in sworn declarations, and refusing to end his improper liaisons.

4. With this Complaint, plaintiff seeks the Court's aid in obtaining the peace for which it bargained more than seven years ago. Plaintiff requests liquidated damages pursuant to the terms of the Agreement from Armstrong and his sham corporate alter ego, the Gerald Armstrong Corporation ("GAC"), as well as injunctive relief to prevent additional and future breaches of the Agreement by Armstrong.

THE PARTIES

5. Plaintiff Church of Scientology International is a non-profit religious corporation incorporated under the laws of the State of California, having its principal offices in Los Angeles, California. Plaintiff CSI is the Mother Church of the Scientology religion.

6. Defendant Gerald Armstrong is a resident of Marin County, California.

7. Defendant Gerald Armstrong Corporation is a corporation

incorporated under the laws of the State of California, having its principal offices in San Anselmo, California.

8. Defendant Armstrong is the principal shareholder in GAC and its sole employee, and has been since the incorporation of GAC in 1987.

9. Defendant GAC is, and at all times since its incorporation was, the alter ego of defendant Armstrong and there exists, and at all times since GAC's incorporation has existed, a unity of interest and ownership between these two defendants such that any separateness between them has ceased to exist, in that defendant Armstrong caused his own personal assets to be transferred to GAC without adequate consideration, in order to evade payment of his lawful obligations, and defendant Armstrong has completely controlled, dominated, managed and operated GAC since its incorporation for his own personal benefit.

10. Defendant GAC is, and at all times herein mentioned was, a mere shell, instrumentality and conduit through which defendant Armstrong carried on his activities in the corporate name exactly as he conducted it previous to GAC's incorporation, exercising such complete control and dominance of such activities to such an extent that any individuality or separateness of defendant GAC and defendant Armstrong does not, and at all relevant times mentioned herein, did not exist.

11. Adherence to the fiction of the separate existence of defendant GAC as an entity distinct from defendant Armstrong would permit an abuse of the corporate privilege and would sanction fraud, in that Armstrong transferred his material assets to GAC in 1988, prior to embarking on the campaign of harassment

described herein, and with the intention of preventing plaintiff from obtaining monetary relief from Armstrong pursuant to the liquidated damages clause. GAC exists solely so that Armstrong may be "judgment proof."

THE CONTRACT

12. On or about December 6, 1986, CSI and Armstrong entered into a written confidential settlement Agreement, a true and correct copy of which is attached hereto as Exhibit A, and incorporated herein by reference.

13. The Agreement was entered into by plaintiff and defendant Armstrong, with the participation of their respective counsel after full negotiation. Each provision of the Agreement was carefully framed by the parties and their counsel to accurately reflect the agreement of the parties.

14. Plaintiff specifically negotiated for and obtained from Armstrong the provisions in the Agreement delineated in paragraphs 7(D), 7(H), 7(G), 10 and paragraphs 12 through 18, because it was well aware, through investigation, that Armstrong had undertaken a series of covert activities, apart from the litigation, which were intended by Armstrong to discredit Church leaders, spark government raids into the Churches, create phony "evidence" of wrongdoing against the Churches, and, ultimately, destroy the Churches and their leadership.

15. Contemporaneously with the signing of the Agreement, Armstrong represented that he understood the Agreement's provisions and was acting of his own free will and not under duress.

16. The Agreement also provided that plaintiff CSI would

pay to Armstrong's attorney, Michael Flynn, a lump sum amount intended to settle not just Armstrong's case, but the cases of other clients of Mr. Flynn as well, and that Mr. Flynn would pay to Armstrong a portion of that settlement amount. The exact amount of the portion to be paid to Armstrong by Mr. Flynn was maintained as confidential between Mr. Flynn and Armstrong.

17. CSI paid to Mr. Flynn the lump sum settlement amount.

18. Mr. Flynn paid to Armstrong his confidential portion of the lump sum settlement amount, which was at least $520,000, after expenses.

19. The consideration paid to Armstrong was fair, reasonable and adequate. Plaintiff CSI has performed all of its obligations pursuant to the Agreement.

FIRST CAUSE OF ACTION

(Against Armstrong for Breach of Contract)

20. Plaintiff realleges paragraphs 1-19, inclusive, and incorporates them herein by reference.

21. Vicki and Richard Aznaran ("the Aznarans") are former Scientology parishioners currently engaged in litigation against, inter alia, RTC and CSI, in the case of Vicki J. Aznaran, et al. v. Church of Scientology of California, et al., United States District Court for the Central District of California, Case No. CV 88-1786 JMI (Ex).

22. In June, 1991, the Aznarans discharged their attorney, Ford Greene, and retained attorney Joseph A. Yanny to represent them.

23. While acting as the Aznarans' counsel, Yanny hired Gerald Armstrong as a paralegal to help Yanny on the Aznaran

case.

24. In July, 1991, Armstrong agreed to travel from Marin County to Los Angeles and asked Yanny to pay him $500 for his proposed help.

25. In July, 1991, Armstrong did travel to Los Angeles as he had agreed, stayed with Yanny on July 15 and July 16, 1991, and provided Yanny with paralegal assistance and a declaration for the Aznaran case.

26. Yanny is former counsel to CSI, and his substitution into the case was vacated by the Court sua sponte on July 24, 1991, the Court noting that Yanny's retention as the Aznarans' counsel was "highly prejudicial" to CSI.

27. Armstrong's acceptance of employment by Yanny to work on the Aznarans' litigation is a direct violation of Paragraphs 7(G) and 10 of the Agreement.

28. As a direct and proximate result of Armstrong's breach of the agreement by providing paralegal assistance to Yanny in the Aznarans' litigation, plaintiff has incurred damages which are not presently calculable. In no event, however, are they less than the jurisdictional minimum of this Court. Consequently, for this breach plaintiff seeks compensatory and consequential damages according to proof.

SECOND CAUSE OF ACTION

(Against Armstrong for Breach of Contract)

29. Plaintiff realleges paragraphs 1-19, 21-28, inclusive, and incorporates them herein by reference.

30. After Yanny entered his appearance in the Aznarans' case and indicated to CSI's counsel that he represented Gerald

Armstrong as well, CSI brought suit against Yanny in the case of Religious Technology Center, et al. v. Joseph A. Yanny, et al., Los Angeles Superior Court No. BC 033035 ("RTC v. Yanny"). In that action, plaintiff sought and obtained a Temporary Restraining Order and a Preliminary Injunction against Yanny, which prohibit Yanny from aiding, advising, or representing, directly or indirectly, the Aznarans or Armstrong, on any matters relating to the plaintiff.

31. At the hearings before the Court on the temporary restraining order and the injunction, Yanny filed two declarations prepared and executed by Armstrong on July 16, 1991. The declarations were offered by Yanny as part of Yanny's defense, which was ultimately rejected by the Court when it issued its injunction.

32. Armstrong's aid to Yanny in the RTC v. Yanny case is a direct violation of Paragraphs 7(G) and 10 of the Agreement.

33. Armstrong attached as an exhibit to one of his July 16, 1991 declarations a copy of the Agreement, the terms of which he had agreed, pursuant to paragraph 18(D), to keep confidential. This disclosure of the terms of the Agreement is a violation of its non-disclosure provisions, requiring that Armstrong pay to CSI $50,000 in liquidated damages.

34. Despite demand by plaintiff, Armstrong has failed and refused to pay them the $50,000 owed in liquidated damages for this breach of the Agreement.

THIRD CAUSE OF ACTION

(Against All Defendants for Breach of Contract)

35. Plaintiff realleges paragraphs 1-19, 21-28 and 30-34,

inclusive, and incorporates them herein by reference.

36. After Yanny's substitution into the Aznarans' case was summarily vacated, Ford Greene was reinstated as Aznarans' counsel of record. Ford Greene's law offices are located in San Anselmo, California.

37. On or about August, 1991, Armstrong began working in Ford Greene's office as a paralegal on the Aznarans' case. When, thereafter, the Aznarans hired attorney John Elstead to represent them as well, Armstrong provided paralegal services to Elstead as well as Greene. Armstrong's employment in Greene's office has continued to the present. Armstrong's activities constitute a daily and continuing breach of his contract, rendering plaintiff's bargain a nullity.

38. Plaintiff CSI has already incurred, and continues to incur, damages as a direct and proximate result of Armstrong's provision of aid to Greene in the Aznarans' case. Those damages are not presently calculable and will cease only when Armstrong is ordered to stop his improper conduct. In no event, however, are they less than the jurisdictional minimum of this Court. Consequently, for this breach plaintiff seeks compensatory and consequential damages according to proof.

FOURTH CAUSE OF ACTION

(Against All Defendants for Breach of Contract)

39. Plaintiff realleges paragraphs 1-19, 21-28, 30-34 and 36-38, inclusive, and incorporates them herein by reference.

40. In addition to the paralegal services which Armstrong has provided to Ford Greene and John Elstead on the Aznarans' litigation, Armstrong also provided the Aznarans with a

declaration, dated August 26, 1991, and filed in the Aznarans' case. In that declaration, Armstrong describes some of his alleged experiences with and concerning plaintiff, and purports to authenticate copies of certain documents. These actions and disclosures are violations of paragraphs 7(G), 7(H) and 10 of the Agreement, requiring that Armstrong pay to CSI $50,000 in liquidated damages.

41. Despite demand by plaintiff, Armstrong has failed and refused to comply with the liquidated damages provision by paying $50,000 to plaintiff as demanded for this breach of the Agreement.

FIFTH CAUSE OF ACTION

(For Breach of Contract Against Armstrong)

42. Plaintiff realleges paragraphs 1-19, 21-28, 30-34, 36-38 and 40-41, inclusive, and incorporates them hereby reference.

43. On or about March 19, 1992, Armstrong, acting through Ford Greene as his agent, transmitted a press release to various members of the media, including the Cable News Network, San Francisco Chronicle, San Francisco Examiner, and the Marin County Independent Journal. A true and correct copy of the press release is attached hereto as Exhibit B. Said press release violated the Agreement in that it constituted disclosures by Armstrong, through Ford Greene as his agent, of his experiences with Scientology as prohibited by paragraph 2. The following are the excerpts from the press release which violate paragraph 2:

a) "Can the Scientology organization purchase the free speech rights of Gerald Armstrong-the former in-house biographer researcher/archivist of cult leader, L. Ron Hubbard..."

> b) "A former high-ranking Scientologist for 12 years, Armstrong split with the group when it insisted he continue lying about the accomplishments Hubbard claimed to the public at large."
>
> c) "For years Scientology has treated Armstrong as a 'suppressive person' who was 'fair game.'"
>
> d) "Armstrong is resisting Scientology's high-powered attack in an effort to affirm his right to free speech to maintain vigilance for the truth."
>
> e) "(Scientology is) fabricating false scenarios in other court proceedings that Armstrong was an agent of the IRS out to destroy it."

44. In addition, the press release devotes an entire paragraph to a description of the lawsuit resulting from the Settlement Agreement and to a description of the Settlement Agreement itself:

> "After Armstrong beat Scientology's lawsuit against him in 1984, he was poised to prosecute his own claims. For millions of dollars, however, in 1986 Scientology settled with he and over 17 other Scientology knowledgeable individuals on the condition that those persons would forever keep silent, avoid giving sworn testimony by evading subpoenas, and never aid or assist anyone adverse to Scientology."

The distribution of the press release violated the provisions of paragraphs 7(D) and 18 of the Agreement.

45. By reason of the foregoing breach by Armstrong, plaintiff is entitled to $50,000 in liquidated damages and compensatory damages not presently known but believed to be in excess of the jurisdictional minimum of this Court.

SIXTH CAUSE OF ACTION

(For Breach of Contract by Armstrong)

46. Plaintiff realleges paragraphs 1-19, 21-28, 30-34, 36-38, 40-41 and 43-45, inclusive, and incorporates them hereby by reference.

47. On or about March 19 and 20, 1992, Armstrong and Greene, acting as Armstrong's agent, granted the media additional interviews, which also violated paragraph 2 of the Agreement. During the course of his interview with the Cable News Network, for example, Armstrong stated, "I'm an expert in the misrepresentations Hubbard has made about himself from the beginning of Dianetics until the day he died." Attached hereto and incorporated herein by reference as Exhibit C is a true and correct transcription of the CNN broadcast which featured this statement made voluntarily by Armstrong in a media interview.

48. By reason of the foregoing breach of the Agreement, plaintiff is entitled to $50,000 in liquidated damages.

SEVENTH CAUSE OF ACTION

(Against Armstrong for Breach of Contract)

49. Plaintiff realleges paragraphs 1-19, 21-28, 30-34, 36-38, 40-41, 43-45 and 47-48, inclusive and incorporates them herein by reference.

50. On or about February, 1992, Armstrong agreed to appear voluntarily as an "expert witness" in litigation known as Hunziker v. Applied Materials, No. 692629 S.C.S.C (the "Hunziker case"). The alleged subject of his "expertise" was Scientology. The defendants named in the Hunziker case include, inter alia, World Institute of Scientology Enterprises, Inc., which is a Scientology affiliated entity protected by the Agreement.

51. On or about February 21, 1992 and February 23, 1992, Armstrong met voluntarily with James Rummond and John Elstead, attorneys for the plaintiffs in the Hunziker case. During his meetings with these attorneys, Armstrong discussed his alleged

history and experiences with plaintiff and with other Scientology entities and individuals protected by the Agreement, and offered to appear for the plaintiffs as an "expert" on the subject of Scientology practices and beliefs.

52. On March 3, 1992, Armstrong voluntarily, and without the issuance of a subpoena by anyone, appeared for deposition in the Hunziker case and accepted a fee for his testimony from the defendants in that case of $1,000. During the course of the deposition, which lasted for approximately four hours, Armstrong testified at length concerning his alleged experiences with and concerning plaintiff and other Scientology affiliated entities and individuals protected by the Agreement, and concerning knowledge and information which he claimed to have concerning plaintiff and other Scientology affiliated entities and individuals.

53. During his deposition on March 3, 1992, Armstrong produced documents which he claimed to have reviewed in preparation for his testimony, in violation of paragraph 7(D) of the Agreement.

54. On or about March 12, 1992, Armstrong again appeared for deposition in the Hunziker case. This time, Armstrong claimed that he had been given a deposition subpoena not by the deposing attorney, but by attorney Elstead, and that Elstead had "filled out" the subpoena earlier that morning. Armstrong refused to produce a copy of the alleged subpoena, which had not been served on any of the parties to the case. In fact, Armstrong himself requested that Elstead issue him a subpoena on Sunday, March 8, 1992, after a temporary restraining order was

issued in this case. On March 8, 1992, Armstrong delivered additional documents to Elstead, again in violation of paragraph 7(D) of the Agreement.

55. Plaintiff learned in April, 1992, through review of the aforesaid deposition transcript, that since the signing of the Agreement, Armstrong had "taken it upon [him]self" to reacquire documents which he had previously returned to plaintiff "from whatever source." He produced many of those documents voluntarily, first to Elstead on March 8, 1992, and then to opposing counsel during the March 12, 1992 deposition.

56. These actions and disclosures are violations of Paragraphs 7(D), 7(G), 7(H) and 10 of the Agreement, requiring that Armstrong pay to CSI $250,000 in liquidated damages.

EIGHTH CAUSE OF ACTION

(Against Armstrong for Breach of Contract)

57. Plaintiff realleges paragraphs 1-19, 21-28, 30-34, 36-38, 40-41, 43-45, 47-48, 50-56, inclusive, and incorporates them herein by reference.

58. On or about April 7, 1992, while testifying in the matter known as Church of Scientology v. Yanny, (No. BC 033035), Armstrong made the Settlement Agreement sued upon herein an exhibit to the deposition transcript. Said action was a breach of paragraph 18(D) of the Agreement which prohibits disclosure of the contents of the Agreement.

59. By reason of the foregoing breach of the Agreement, Plaintiff is entitled to $50,000 in liquidated damages, together with compensatory damages in an amount not presently known to plaintiff but believed to be in excess of the jurisdictional

minimum of this court.

NINTH CAUSE OF ACTION

(Against Armstrong for Beach of Contract)

60. Plaintiff realleges paragraphs 1-19, 21-28, 30-34, 36-38, 40-41, 43-45, 47-48, 50-56 and 58-59, inclusive, and incorporates them herein by reference.

61. In breach of the provision of paragraph 7(E) of the Agreement, Armstrong failed to return a letter written by L. Ron Hubbard to the Federal Bureau of Investigation in 1955 and an internal communication known as "Technical Bulletin."

62. In breach of the provisions of paragraph 7(H) of the Agreement, Armstrong gave a declaration in the Aznaran litigation on August 26, 1991 in opposition to a motion to exclude expert testimony.

63. Said declaration attached as exhibits the two documents referred to in paragraph 61 above, in breach of the provisions of Paragraph 7(D) of the Agreement.

64. By reason of the breaches by Armstrong in paragraphs 7(E) and 7(H) of the Agreement, plaintiff has been damaged in an amount not presently known but believed to be in excess of the jurisdictional minimum of this Court.

65. By reason of the breach by Armstrong of paragraph 7(D) of the Agreement, plaintiff is entitled to liquidated damages in the amount of $50,000.

TENTH CAUSE OF ACTION

(Against Armstrong for Breach of Contract)

66. Plaintiff realleges paragraphs 1-19, 21-28, 30-34, 36-38, 40-41, 43-45, 47-48, 50-56, 58-59 and 61-65, inclusive, and

incorporates them herein by reference.

67. Plaintiff learned in March, 1992, that during 1990 and 1991, Armstrong voluntarily provided aid and advice to Bent Corydon and to Corydon's attorney, Toby Plevin, in the conduct of litigation against plaintiff and affiliated entities in the case of Bent Corydon v. Church of Scientology International, et al., Los Angeles Superior Court Case No. C 694401.

68. Armstrong's voluntary provision of aid to Plevin to work on Corydon's litigation is a direct violation of paragraphs 7(G) and 10 of the Agreement.

69. As a direct and proximate result of Armstrong's breach of the Agreement by providing voluntary assistance to Plevin in Corydon's litigation, plaintiff has incurred damages which are not presently calculable. In no event, however, are they less than the jurisdictional minimum of this Court. Consequently, for this breach plaintiff seeks compensatory and consequential damages according to proof.

ELEVENTH CAUSE OF ACTION

(Against Armstrong for Breach of Contract)

70. Plaintiff realleges paragraphs 1-19, 21-28, 30-34, 36-38, 40-41, 43-45, 47-48, 50-56, 58-59, 61-65, 67-69, inclusive, and incorporates them herein by reference.

71. On May 27, 1992, after plaintiff's motion for preliminary injunction in this matter had been argued, and while a determination of that motion was still pending, Armstrong voluntarily provided a declaration to Gary M. Bright and Jerold Fagelbaum, attorneys for defendants David Mayo, Church of the New Civilization, John Nelson, Harvey Haber, Vivien Zegel and Dede

Reisdorf in the consolidated cases of Religious Technology Center, et al. v. Robin Scott, et al., and Religious Technology Center, et al. v. Wollersheim, et al., United States District Court for the Central District of California, Case Nos. CV 85-711 JMI (Bx) and CV 85-7197 JMI (Bx) (the "Scott case"). The plaintiffs in the Scott case are plaintiff, Church of Scientology International, Church of Scientology of California, and Religious Technology Center, all entities specifically protected by the Agreement.

72. In his May 27, 1992 declaration, Armstrong purports to authenticate an earlier declaration which describes some of his alleged experiences with and concerning plaintiff, as well as a portion of a transcript which was ordered sealed in the earlier action between plaintiff and defendant. These actions and disclosures are violations of paragraphs 7(G), 7(H) and 10 of the Agreement, requiring that Armstrong pay to CSI $50,000 in liquidated damages.

73. As a direct and proximate result of Armstrong's breach of the Agreement by providing voluntary assistance to Bright and Fagelbaum in the Scott case, plaintiff has incurred additional damages which are not presently calculable. In no event, however, are they less than the jurisdictional minimum of this Court. Consequently, for this breach plaintiff also seeks compensatory and consequential damages according to proof.

TWELFTH CAUSE OF ACTION

(Against All Defendants for Breach of Contract)

74. Plaintiff realleges paragraphs 1-19, 21-28, 30-34, 36-38, 40-41, 43-45, 47-48, 50-56, 58-59, 61-65, 67-69, 71-73,

inclusive, and incorporates them herein by reference.

75. Since August, 1991, Armstrong has worked as a paralegal for attorney Ford Greene. Mr. Greene's practice consists substantially of pressing claims by former Scientologists against the plaintiff and other individuals and entities identified in paragraph 1 as beneficiaries of the Agreement (collectively, "the Beneficiaries").

76. Among Mr. Greene's clients who are pressing claims against one or more of the Beneficiaries are Ed Roberts and Denise Cantin.

77. While working in Mr. Greene's office, Armstrong provided substantial paralegal assistance to Mr. Greene in the Ed Roberts and Denise Cantin matters. In the case of Roberts, for example, Armstrong went to Colorado and interviewed Roberts in November, 1991, and has interviewed him at least seven times since then. In December, 1992, Armstrong even made a settlement demand to plaintiff's counsel on behalf of Roberts, without bothering to go through Roberts' attorney, Mr. Greene.

78. Armstrong's employment by Greene to work on the Roberts and Cantin matters is a direct violation of paragraphs 7(G) and 10 of the Agreement.

79. As a direct and proximate result of Armstrong's breach of the agreement by providing paralegal assistance to Greene on the Roberts and Cantin matters, plaintiff has incurred damages which are not presently calculable. In no event, however, are they less than the jurisdictional minimum of this Court. Consequently, for this breach plaintiff seeks compensatory and consequential damages according to proof.

THIRTEENTH CAUSE OF ACTION

(For Breach of Contract Against All Defendants)

80. Plaintiff realleges paragraphs 1-19, 21-28, 30-34, 36-38, 40-41, 43-45, 47-48, 50-56, 58-59, 61-65, 7-69, 71-73 and 75-79, inclusive, and incorporates them herein by reference.

81. In or about November, 1992, in Los Angeles, California, Armstrong attended a convention of the Cult Awareness Network, an anti-religious group whose members advocate the kidnapping and "deprogramming" of persons belonging to groups which they label "cults." While at the convention, Armstrong provided a lengthy videotaped interview to deprogramming specialist Jerry Whitfield. A true and correct copy of the transcript of the videotape is attached hereto as Exhibit D. Said videotaped interview violates the Agreement in that it purportedly contains disclosures by Armstrong of his claimed experiences with Scientology as prohibited by paragraph 7(D) of the Agreement.

82. In addition, the videotaped interview devotes an entire section to a description of the earlier action resulting from the Settlement Agreement and to a description of the Settlement Agreement itself. The making of the videotape violated the provisions of paragraphs 7(D) and 18 of the Agreement.

83. In addition, plaintiff is informed and therefore believes that Armstrong has distributed the videotape to persons other than Whitfield, the number of which plaintiff has still to ascertain. The provision of the videotape by Armstrong to any person additionally violates paragraphs 7(D) and 18 of the Agreement.

84. In addition, while at the CAN convention, Armstrong

spoke with approximately fifty (50) people, and willingly disclosed to them his claimed experiences with Scientology, in violation of paragraphs 7(D) and 18 of the Agreement.

85. By reason of the foregoing breaches by Armstrong, plaintiff is entitled to at least $150,000 in liquidated damages, and further liquidated damages subject to proof.

FOURTEENTH CAUSE OF ACTION

(For Breach of Contract Against All Defendants)

86. Plaintiff realleges paragraphs 1-19, 21-28, 30-34, 36-38, 40-41, 43-45, 47-48, 50-56, 58-59, 61-65, 67-69, 71-73, 75-79 and 81-85, inclusive, and incorporates them herein by reference.

87. On or about December 22, 1992, Armstrong sent a letter to, inter alia, Malcolm Nothling, Ed Roberts, Lawrence Wollersheim, Richard Aznaran, Vicki Aznaran, Richard Behar, Ford Greene, Paul Morantz, Joseph A. Yanny, Toby L. Plevin, Graham E. Berry, Stuart Cutler, Anthony Laing, John C. Elstead, Fr. Kent Burtner, Margaret Singer, Cult Awareness Network and Daniel A. Leipold. Each of these individuals or organizations is (a) engaged in litigation against plaintiff and/or other Beneficiaries; (b) an avowed adversary of plaintiff and/or other Beneficiaries; and/or (c) an attorney who represents or has represented litigants and/or adversaries of plaintiff and/or other Beneficiaries. A true and correct copy of the letter sent by Armstrong is attached hereto as Exhibit E. Said letter violates the Agreement in that it contains purported disclosures by Armstrong of his claimed experiences with Scientology as prohibited by paragraph 7(D).

88. In addition, the letter devotes an entire section to a

description of the earlier action resulting from the breaches of the Settlement Agreement and to a description of the Settlement Agreement itself. The sending of the letter to plaintiff's adversaries violated the provision of paragraph 7(D) of the Agreement.

89. By reason of the foregoing breach of the Agreement, plaintiff is entitled to $950,000 in liquidated damages.

FIFTEENTH CAUSE OF ACTION

(Against All Defendants for Breach of Contract)

90. Plaintiff realleges paragraphs 1-19, 21-28, 30-34, 36-38, 40-41, 43-45, 47-48, 50-56, 58-59, 61-65, 71-73, 75-79, 81-85 and 87-89, inclusive and incorporates them herein by reference.

91. According to Armstrong, sometime between December 22, 1992 and March 10, 1993, he spoke at an event at which approximately 30 to 40 people were present. At this event, Armstrong spoke of, inter alia, his claimed experiences with Scientology, in violation of at least paragraphs 7(D) and 18 of the Agreement, and received monetary compensation for his speech.

92. By reason of the foregoing breach of the Agreement, plaintiff is entitled to $50,000 in liquidated damages.

SIXTEENTH CAUSE OF ACTION

(Against All Defendants for Breach of Contract)

93. Plaintiff realleges paragraphs 1-19, 21-28, 30-34, 36-38, 40-41, 43-45, 47-48, 50-56, 58-59, 61-65, 71-73, 75-79, 81-85, 87-89, 91-92, inclusive, and incorporates them herein by reference.

94. In or about June, 1993, Armstrong gave an interview to one or more reporters from Newsweek magazine, which also violated

paragraph 7(D) of the Agreement. Plaintiff is informed, and therefore believes, that during the course of his interview with the Newsweek reporter(s), whose identity is known to defendants but not to plaintiff, Armstrong stated that the Founder of the Scientology faith, L. Ron Hubbard, wanted "rich Scientologists to buy huge quantities of [The Way to Happiness] for distribution. He wanted to go down in history as a scientist or a philosopher or both." Attached hereto and incorporated herein by reference as Exhibit F is a true and correct copy of the Newsweek article which featured this statement made voluntarily by Armstrong in a media interview. The provision of this interview by Armstrong violated the provisions of paragraphs 2, 7(D) and 18 of the Agreement.

95. By reason of the foregoing breach of the Agreement, plaintiff is entitled to $50,000 in liquidated damages.

SEVENTEENTH CAUSE OF ACTION

(Against All Defendants for Breach of Contract)

96. Plaintiff realleges paragraphs 1-19, 21-28, 30-34, 36-38, 40-41, 43-45, 47-48, 50-56, 58-59, 61-65, 67-69, 71-73, 75-79, 81-85, 87-89, 91-92 and 94-95, inclusive, and incorporates them herein by reference.

97. In or about August, 1993, Armstrong gave an interview to one or more reporters from Entertainment Television, with the intention that the reporters broadly republish the interview on national television, which also violated paragraph 7(D) of the Agreement. During the course of his interview with the Entertainment Television reporter(s), whose identity is known to defendants but not to plaintiff, Armstrong made statements

concerning his claimed experiences with Scientology. Further, Armstrong provided to Entertainment Television a copy of a manuscript entitled: "ONE HELL OF A STORY An Original Treatment Written for Motion Picture Purposes Created and Written by Gerald Armstrong" (hereinafter, "the treatment"). Plaintiff is informed and believes that the treatment so provided includes detailed descriptions of Armstrong's alleged experiences in and concerning Scientology, including a description of Church scriptures which are considered sacred and confidential by the Church. Portions of the Armstrong interview and the treatment were shown on Entertainment Television's "Entertainment Tonight" show on August 5, 1993. The provision of this interview and the treatment by Armstrong to Entertainment Television violated the provisions of at least paragraphs 7(D) and 18 of the Agreement.

98. By reason of the foregoing breach of the Agreement, plaintiff is entitled to $50,000 in liquidated damages.

EIGHTEENTH CAUSE OF ACTION

(Against All Defendants for Injunctive Relief)

99. Plaintiff realleges paragraphs 1-19, 21-28, 30-34, 36-38, 40-41, 43-45, 47-48, 50-56, 58-59, 61-65, 67-69, 71-73, 75-79, 81-85, 87-89, 91-92, 94-95, 97-98, inclusive, and incorporates them herein by reference.

100. In or about June 1993, defendant Armstrong caused the formation of and became a director and officer of a Colorado corporation which he called Fight Against Coercive Tactics, Inc. ("FACTI"). One of the avowed purposes of this corporation is to foment civil litigation against plaintiff and the other entities and individuals protected by the Agreement. Armstrong formed

FACTI to implement his plan to foment such litigation.

101. Armstrong has established FACTI to create an electronic "library" that would feature, inter alia, hundreds of documents, declarations, exhibits and arguments prepared by Armstrong which discuss and pertain to the Beneficiaries, and to attempt to "shelter" these contractual breaches under a corporate name and the rubric of First Amendment privilege.

102. Armstrong has provided an entire assortment of documents to FACTI for its electronic library, including a copy of the settlement agreement herein, scores of declarations, and documents which Armstrong retained in violation of paragraph 7(E) of the Agreement. Providing these documents to FACTI with the intention that FACTI distribute them to others, including but not limited to other litigants, is a breach of paragraphs 7(H) and 7(D) of the Agreement.

103. In or about January, 1994, Armstrong, using FACTI, sent a mass mailing to an as yet unascertained number of people, including members of the Scientology faith. In the mailing, Armstrong exhorts recipients to bring civil actions against the Church, stating that he is collecting negative information about the plaintiff "to assist ongoing litigation." Further, Armstrong requests the addresses of and ways to contact the family members of senior Church executives, an action which is clearly intended for the purpose of harassment.

104. To further the fomenting of litigation, the mailing contains a list, based on rumor, falsehood and innuendo, of persons supposedly harmed or injured by their belief in the Scientology religion. Plaintiff is informed and believes that

Armstrong, using FACTI as his cover, provided that list to Graham Berry, an attorney representing defendant Uwe Geertz in the case of Church of Scientology International v. Steven Fishman, et al., United States District Court for the Central District of Los Angeles, Case No. 91-6426 HLH (Tx), which Berry then used against the Church in that action.

105. Armstrong's provision of assistance to Geertz and scores of other as yet unidentified would-be litigants is a direct violation of paragraphs 7(G) and 10 of the Agreement.

106. As a direct and proximate result of Armstrong's breach of the agreement via FACTI, plaintiff has incurred damages which are not presently calculable. In no event, however, are they less than the jurisdictional minimum of this Court. Consequently, for this breach plaintiff seeks compensatory and consequential damages according to proof.

NINETEENTH CAUSE OF ACTION

(Against Armstrong for Breach of Contract)

107. Plaintiff realleges paragraphs 1-19, 21-28, 30 -34, 36-38, 40-41, 47-48, 50-56, 58-59, 61-65, 67-69, 71-73, 75-79, 81-85, 87-89, 91-92, 94-95, 97-98, and 100-106, inclusive, and incorporates them herein by reference.

108. On or about February 22, 1994, Armstrong voluntarily provided a declaration to Graham E. Berry, Gordon C. Calhoun, and the law firm of Lewis, D'Amato, Brisbois & Bisgaard, attorneys for defendant Uwe Geertz in the case of Church of Scientology International v. Steven Fishman and Uwe Geertz, United States District Court for the Central District of California, Case No. CV 91-6426 HLH (Tx). The declaration consists of a 14-page

discussion of his claimed experiences with and concerning plaintiff.

109. In his February 22, 1994 declaration, Armstrong also purports to authenticate a document which he titles "Find a Better Basket," and which he claims is both a literary work and a declaration. Armstrong further claims that "Find a Better Basket" describes some of his alleged experiences with and concerning plaintiff.

110. These actions and disclosures are violations of paragraphs 7(G), 7(H) and 10 of the Agreement, requiring that Armstrong pay to CSI $50,000 in liquidated damages.

111. As a direct and proximate result of Armstrong's breach of the Agreement by providing voluntary assistance to Berry and Calhoun in the Fishman case, plaintiff has incurred additional damages which are not presently calculable. In no event, however, are they less than the jurisdictional minimum of this Court. Consequently, for this breach plaintiff also seeks compensatory and consequential damages according to proof.

TWENTIETH CAUSE OF ACTION

(Against All Defendants for Injunctive Relief)

112. Plaintiff realleges paragraphs 1-19, 21-28, 30-34, 36-38, 40-41, 47-48, 50-56, 58-59, 61-65, 67-69, 71-73, 75-79, 81-85, 87-89, 91-92, 94-95, 97-98, 100-106 and 108-111, inclusive, and incorporates them herein by reference.

113. On or about April 28, 1993, plaintiff learned that Armstrong intended to appear that day on radio station KFAX and disclose his claimed experiences with Scientology. Plaintiff's counsel, Laurie Bartilson, faxed a letter to Armstrong and his

attorney, informing him that plaintiff would consider any such appearance to be a violation of the Agreement, and would subject Armstrong to the liquidated damages provision contained therein. In response, Armstrong sent a letter to Ms. Bartilson which stated, _inter alia_,

> Your threat that you will subject me to the liquidated damages provision of the settlement agreement for appearing on KFAX is obscene. Even its inclusion in the settlement agreement; that is $50,000.00 per word I write or speak about your organization is obscene....

In addition, Armstrong asserted that settlement agreements were an "antisocial policy" of plaintiff. He stated that he would not stop making media appearances and speeches, and that he had more planned for the near future if plaintiff did not immediately accede to his demands:

> I expect to be doing various media appearances in the near future and talks to various groups, including one I have already agreed to with a university psychology class. I think it would be very beneficial, therefore, to resolve our differences as soon as possible by your organization's clear repudiation of its antisocial policies and practices, so that I can have good things to report at these talks.

114. In or about June, 1993, Armstrong made good his threats, and gave an interview to a reporter(s) from _Newsweek_ magazine, as described in paragraph 94, _supra_.

115. On July 2, 1993, again making good his threats, Armstrong appeared in Los Angeles, California at the Los Angeles Superior Court. He attended a hearing in the _Wollersheim II_ case, and afterwards gave an interview to a reporter who claimed to be "working on a story," but refused to identify himself.

116. In or about August, 1993, Armstrong gave an interview to reporters from Entertainment Television, as described in

paragraph 97, supra.

117. In or about August, 1993, Armstrong delivered to Entertainment Television a motion picture "treatment" concerning his experiences in and concerning Scientology, and told reporters for Entertainment Television that he was trying to "sell" the treatment, and have his claimed experiences portrayed in a motion picture.

118. In his February 22, 1994 declaration, which Armstrong provided to attorneys for litigant Uwe Geertz, Armstrong purported to authenticate a document which he titles "Find a Better Basket." Armstrong further claims that "Find a Better Basket" supposedly describes some of his alleged experiences with and concerning plaintiff is the treatment for a screenplay which he hopes to sell.

119. As described in paragraphs 100-103, supra, Armstrong has, in concert with others, created a computer bulletin board which has as its purpose facilitating continuous breaches of the Agreement by electronic means.

120. As a direct and proximate result of Armstrong's breach of the Agreement by disclosing his experiences, by making media appearances, by repeatedly providing assistance to litigants, would-be claimants and their attorneys, and by creating and operating FACTI, which breaches are persistent and continuing, CSI is and will continue to be irreparably harmed, and unless Armstrong and those acting in concert with him are preliminarily and permanently enjoined from continuing that unlawful conduct, further irreparable harm will be caused to CSI.

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ON THE FIRST CAUSE OF ACTION

1. For compensatory and consequential damages according to proof.

2. For attorneys' fees and costs of suit.

ON THE SECOND CAUSE OF ACTION

1. For liquidated damages in the amount of $50,000.

2. For attorneys' fees and costs of suit.

ON THE THIRD CAUSE OF ACTION

1. For compensatory and consequential damages according to proof.

2. For attorneys' fees and costs of suit.

ON THE FOURTH CAUSE OF ACTION

1. For liquidated damages in the amount of $50,000.

2. For attorneys' fees and costs of suit.

ON THE FIFTH CAUSE OF ACTION

1. For liquidated damages in the amount of $50,000.

2. For compensatory and consequential damages according to proof.

3. For attorneys' fees and costs of suit.

ON THE SIXTH CAUSE OF ACTION

1. For liquidated damages in the amount of $50,000.

2. For attorneys' fees and costs of suit.

ON THE SEVENTH CAUSE OF ACTION

1. For liquidated damages in the amount of $250,000.

2. For attorneys' fees and costs of suit.

ON THE EIGHTH CAUSE OF ACTION

1. For liquidated damages in the amount of $50,000.

2. For attorneys' fees and costs of suit.

ON THE NINTH CAUSE OF ACTION

1. For compensatory and consequential damages according to proof.

2. For liquidated damages in the amount of $50,000.

3. For attorneys' fees and costs of suit.

ON THE TENTH CAUSE OF ACTION

1. For compensatory and consequential damages according to proof.

2. For attorneys' fees and costs of suit.

ON THE ELEVENTH CAUSE OF ACTION

1. For compensatory and consequential damages according to proof.

2. For liquidated damages in the amount of $50,000.

3. For attorneys' fees and costs of suit.

ON THE TWELFTH CAUSE OF ACTION

1. For compensatory and consequential damages according to proof.

2. For attorneys' fees and costs of suit.

ON THE THIRTEENTH CAUSE OF ACTION

1. For liquidated damages of $150,000, and further liquidated damages according to proof.

2. For attorneys' fees and costs of suit.

ON THE FOURTEENTH CAUSE OF ACTION

1. For liquidated damages in the amount of $950,000.

2. For attorneys' fees and costs of suit.

ON THE FIFTEENTH CAUSE OF ACTION

1. For liquidated damages in the amount of $50,000.

2. For attorneys' fees and costs of suit.

ON THE SIXTEENTH CAUSE OF ACTION

1. For liquidated damages in the amount of $50,000.
2. For attorneys' fees and costs of suit.

ON THE SEVENTEENTH CAUSE OF ACTION

1. For liquidated damages in the amount of $50,000.
2. For attorneys' fees and costs of suit.

ON THE EIGHTEENTH CAUSE OF ACTION

1. For compensatory and consequential damages according to proof.
2. For attorneys' fees and costs of suit.

ON THE NINETEENTH CAUSE OF ACTION

1. For liquidated damages in the amount of $50,000.
2. For compensatory and consequential damages according to proof.
3. For attorneys' fees and costs of suit.

ON THE TWENTIETH CAUSE OF ACTION

1. For a preliminary and permanent injunction prohibiting and restraining all defendants, including Armstrong, from violating any of the provisions of the Agreement, including the provisions of paragraphs 7(D), 7(E), 7(G), 7(H) and 18(D).

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ON ALL CAUSES OF ACTION

1. For such other and further relief as the Court may deem just and proper.

DATED: April 4, 1994

BOWLES & MOXON

By:________________________
Laurie J. Bartilson

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

VERIFICATION

I, LYNN R. FARNY, declare as follows:

I am Secretary of the Plaintiff, Church of Scientology International, in the above-entitled matter. I have read the foregoing Verified Second Amended Complaint for Damages and for Preliminary and Permanent Injunctive Relief for Breach of Contract and know the contents thereof, which are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

I declare under the penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed on April 4, 1994, at Los Angeles, California.

LYNN R. FARNY

MUTUAL RELEASE OF ALL CLAIMS AND SETTLEMENT AGREEMENT

1. This Mutual Release of All Claims and Settlement Agreement is made between Church of Scientology International (hereinafter "CSI") and Gerald Armstrong, (hereinafter "Plaintiff") Cross-Complainant in Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153. By this Agreement, Plaintiff hereby specifically waives and releases all claims he has or may have from the beginning of time to and including this date, including all causes of action of every kind and nature, known or unknown for acts and/or omissions against the officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel of CSI as well as the Church of Scientology of California, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; Religious Technology Center, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; all Scientology and Scientology affiliated organizations and entities and their officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; Author Services, Inc., its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; L. Ron Hubbard, his heirs, beneficiaries, Estate and its executor; Author's Family Trust, its beneficiaries and its trustee; and Mary Sue Hubbard, (all hereinafter collectively referred to as the

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EXHIBIT A

"Releasees"). The parties to this Agreement hereby agree as follows:

2. It is understood that this settlement is a compromise of doubtful and disputed claims, and that any payment is not to be construed, and is not intended, as an admission of liability on the part of any party to this Agreement, specifically, the Releasees, by whom liability has been and continues to be expressly denied. In executing this settlement Agreement, Plaintiff acknowledges that he has released the organizations, individuals and entities listed in the above paragraph, in addition to those defendants actually named in the above lawsuit, because among other reasons, they are third party beneficiaries of this Agreement.

3. Plaintiff has received payment of a certain monetary sum which is a portion of a total sum of money paid to his attorney, Michael J. Flynn. The total sum paid to Mr. Flynn is to settle all of the claims of Mr. Flynn's clients. Plaintiff's portion of said sum has been mutually agreed upon by Plaintiff and Michael J. Flynn. Plaintiff's signature below this paragraph acknowledges that Plaintiff is completely satisfied with the monetary consideration negotiated with and received by Michael J. Flynn. Plaintiff acknowledges that there has been a block settlement between Plaintiff's attorney, Michael J. Flynn, and the Church of Scientology and Churches and entities related to the Church of Scientology, concerning all of Mr. Flynn's clients who were in litigation with any Church of Scientology or related entity. Plaintiff has received a portion of this block.

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amount, the receipt of which he hereby acknowledges. Plaintiff understands that this amount is only a portion of the block settlement amount. The exact settlement sum received by Plaintiff is known only to Plaintiff and his attorney, Michael J. Flynn, and it is their wish that this remain so and that this amount remain confidential.

Signature line for Gerald Armstrong

4. For and in consideration of the above described consideration, the mutual covenants, conditions and release contained herein, Plaintiff does hereby release, acquit and forever discharge, for himself, his heirs, successors, executors, administrators and assigns, the Releasees, including Church of Scientology of California, Church of Scientology International, Religious Technology Center, all Scientology and Scientology affiliated organizations and entities, Author Services, Inc. (and for each organization or entity, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel); L. Ron Hubbard, his heirs, beneficiaries, Estate and its executor; Author's Family Trust, its beneficiaries and trustee; and Mary Sue Hubbard, and each of them, of and from any and all claims, including, but not limited to, any claims or causes of action entitled Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153 and all demands, damages, actions and causes of actions of every kind and nature, known or unknown,

for or because of any act or omission allegedly done by the Releasees, from the beginning of time to and including the date hereof. Therefore, Plaintiff does hereby authorize and direct his counsel to dismiss with prejudice his claims now pending in the above referenced action. The parties hereto will execute and cause to be filed a joint stipulation of dismissal in the form of the one attached hereto as Exhibit "A".

A. It is expressly understood by Plaintiff that this release and all of the terms thereof do not apply to the action brought by the Church of Scientology against Plaintiff for Conversion, Fraud and other causes of action, which action has already gone to trial and is presently pending before the Second District, Third Division of the California Appellate Court (Appeal No. B005912). The disposition of those claims are controlled by the provisions of the following paragraph hereinafter.

B. As of the date this settlement Agreement is executed, there is currently an appeal pending before the California Court of Appeal, Second Appellate District, Division 3, arising out of the above referenced action delineated as Appeal No. B005912. It is understood that this appeal arises out of the Church of Scientology's complaint against Plaintiff which is not settled herein. This appeal shall be maintained notwithstanding this Agreement. Plaintiff agrees to waive any rights he may have to take any further appeals from any decision eventually reached by the Court of Appeal or any rights he may have to oppose (by responding brief or any other means) any further appeals taken by the Church of

Scientology of California. The Church of Scientology of California shall have the right to file any further appeals it deems necessary.

5. For and in consideration of the mutual covenants, conditions and release contained herein, and Plaintiff dismissing with prejudice the action Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153, the Church of Scientology of California does hereby release, acquit and forever discharge for itself, successors and assigns, Gerald Armstrong, his agents, representatives, heirs, successors, assigns, legal counsel and estate and each of them, of and from any and all claims, causes of action, demands, damages and actions of every kind and nature, known or unknown, for or because of any act or omission allegedly done by Gerald Armstrong from the beginning of time to and including the date hereof.

6. In executing this Agreement, the parties hereto, and each of them, agree to and do hereby waive and relinquish all rights and benefits afforded under the provisions of Section 1542 of the Civil Code of the State of California, which provides as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

7. Further, the undersigned hereby agree to the following:

A. The liability for all claims is expressly denied by the parties herein released, and this final compromise and settlement thereof shall never be treated as an admission of liability or responsibility at any time for any purpose.

B. Plaintiff has been fully advised and understands that the alleged injuries sustained by him are of such character that the full extent and type of injuries may not be known at the date hereof, and it is further understood that said alleged injuries, whether known or unknown at the date hereof, might possibly become progressively worse and that as a result, further damages may be sustained by Plaintiff; nevertheless, Plaintiff desires by this document to forever and fully release the Releasees. Plaintiff understands that by the execution of this release no further claims arising out of his experience with, or actions by, the Releasees, from the beginning of time to and including the date hereof, which may now exist or which may exist in the future may ever be asserted by him or on his behalf, against the Releasees.

C. Plaintiff agrees to assume responsibility for the payment of any attorney fee, lien or liens, imposed against him past, present, or future, known or unknown, by any person, firm, corporation or governmental entity or agency as a result of, or growing out of any of the matters referred to in this release. Plaintiff further agrees to hold harmless the parties herein released, and each of them, of and from any liability arising therefrom.

D. Plaintiff agrees never to create or publish or attempt to publish, and/or assist another to create for publication by means of magazine, article, book or other similar form, any writing or to broadcast or to assist another to create, write, film or video tape or audio tape any show, program or movie, or to grant interviews or discuss with others, concerning their experiences with the Church of Scientology, or concerning their personal or indirectly acquired knowledge or information concerning the Church of Scientology, L. Ron Hubbard or any of the organizations, individuals and entities listed in Paragraph 1 above. Plaintiff further agrees that he will maintain strict confidentiality and silence with respect to his experiences with the Church of Scientology and any knowledge or information he may have concerning the Church of Scientology, L. Ron Hubbard, or any of the organizations, individuals and entities listed in Paragraph 1 above. Plaintiff expressly understands that the non-disclosure provisions of this subparagraph shall apply, inter alia, but not be limited, to the contents or substance of his complaint on file in the action referred to in Paragraph 1 hereinabove or any documents as defined in Appendix "A" to this Agreement, including but not limited to any tapes, films, photographs, recastings, variations or copies of any such materials which concern or relate to the religion of Scientology, L. Ron Hubbard, or any of the organizations, individuals, or entities listed in Paragraph 1 above. The attorneys for Plaintiff, subject to the ethical limitations restraining them as promulgated by the state or federal regulatory associations or agencies, agree not to disclose any of the terms and conditions of the settlement negotiations, amount of the settlement, or statements made by either party during settlement conferences. Plaintiff agrees that if the terms of this paragraph are breached by him, that CSI and the other Releasees would be entitled to liquidated damages in the amount of $50,000 for each such breach. All monies received to induce or in payment for a breach of this Agreement, or any part thereof, shall be held in a constructive trust pending the outcome of any litigation over said breach. The amount of liquidated damages herein is an estimate of the damages that each party would suffer in the event this Agreement is breached. The reasonableness of the amount of such damages are hereto acknowledged by Plaintiff.

E. With exception to the items specified in Paragraph 7(L), Plaintiff agrees to return to the Church of Scientology International at the time of the consummation of this Agreement, all materials in his possession, custody or control (or within the possession, custody or control of his attorney, as well as third parties who are in possession of the described documents), of any nature, including originals and all copies or summaries of documents defined in Appendix "A" to this Agreement, including but not limited to any tapes, computer disks, films, photographs, recastings, variations or copies of any such materials which concern or relate to the religion of Scientology, L. Ron Hubbard or any of the organizations, individuals or entities listed in Paragraph 1 above, all evidence of any nature, including evidence obtained from the named defendants through discovery, acquired for the purposes of this lawsuit or any lawsuit, or acquired for any other purpose concerning any Church of Scientology, any financial or administrative materials concerning any Church of Scientology, and any materials relating personally to L. Ron Hubbard, his family, or his estate. In addition to the documents and other items to be returned to the Church of Scientology International listed above and in Appendix "A", Plaintiff agrees to return the following:

(a) All originals and copies of the manuscript for the work "Excalibur" written by L. Ron Hubbard;

(b) All originals and copies of documents commonly known as the "Affirmations" written by L. Ron Hubbard; and

(c) All documents and other items surrendered to the Court by Plaintiff and his attorneys pursuant to Judge Cole's orders of August 24, 1982 and September 4, 1982 and all documents and other items taken by the Plaintiff from either the Church of Scientology or Omar Garrison. This includes all documents and items entered into evidence or marked for identification in Church of Scientology of California v. Gerald Armstrong, Case No. C 420 153. Plaintiff and his attorney will execute a Joint Stipulation or such other documents as are necessary to obtain these documents from the Court. In the event any documents or other items are no longer in the custody or control of the Los Angeles Superior Court, Plaintiff and his counsel will assist the Church in recovering these documents as quickly as possible, including but not limited to those tapes and other documents now in the possession of the United States District Court in the case of United States v. Zolin, Case No. CV

85-0440-HLH(Tx), presently on appeal in the Ninth Circuit Court of Appeals. In the event any of these documents are currently lodged with the Court of Appeal, Plaintiff and his attorneys will cooperate in recovering those documents as soon as the Court of Appeal issues a decision on the pending appeal.

To the extent that Plaintiff does not possess or control documents within categories A-C above, Plaintiff recognizes his continuing duty to return to CSI any and all documents that fall within categories A-C above which do in the future come into his possession or control.

F. Plaintiff agrees that he will never again seek or obtain spiritual counselling or training or any other service from any Church of Scientology, Scientologist, Dianetics or Scientology auditor, Scientology minister, Mission of Scientology, Scientology organization or Scientology affiliated organization.

G. Plaintiff agrees that he will not voluntarily assist or cooperate with any person adverse to Scientology in any proceeding against any of the Scientology organizations, individuals, or entities listed in Paragraph 1 above. Plaintiff also agrees that he will not cooperate in any manner with any organizations aligned against Scientology.

H. Plaintiff agrees not to testify or otherwise participate in any other judicial, administrative or legislative proceeding adverse to Scientology or any of the Scientology Churches, individuals or entities listed in Paragraph 1 above unless compelled to do so by lawful subpoena or other lawful process. Plaintiff shall not make himself amenable to service of any such subpoena in a manner which invalidates the intent of this provision. Unless required to do so by such subpoena, Plaintiff agrees not to discuss this litigation or his experiences with and knowledge of the Church with anyone other than members of his immediate family. As provided hereinafter in Paragraph 18(d), the contents of this Agreement may not be disclosed.

I. The parties hereto agree that in the event of any future litigation between Plaintiff and any of the organizations, individuals or entities listed in Paragraph 1 above, that any past action or activity, either alleged in this lawsuit or activity similar in fact to the evidence that was developed during the course of this lawsuit, will not be used by either party against the other in any future litigation. In other words, the "slate" is wiped clean concerning past actions by any party.

J. It is expressly understood and agreed by Plaintiff that any dispute between Plaintiff and his counsel as to the proper division of the sum paid to Plaintiff by his attorney of record is between Plaintiff and his attorney of record and shall in no way affect the validity of this Mutual Release of All Claims and Settlement Agreement.

K. Plaintiff hereby acknowledges and affirms that he is not under the influence of any drug, narcotic, alcohol or other mind-influencing substance, condition or ailment such that his ability to fully understand the meaning of this Agreement and the significance thereof is adversely affected.

L. Notwithstanding the provisions of Paragraph 7(E) above, Plaintiff shall be entitled to retain any artwork created by him which concerns or relates to the religion of Scientology, L. Ron Hubbard or any of the organizations, individuals or entities listed in Paragraph 1 above provided that such artwork never be disclosed either directly or indirectly, to anyone. In the event of a disclosure in breach of this Paragraph 7(L), Plaintiff shall be subject to the liquidated damages and constructive trust provisions of Paragraph 7(D) for each such breach.

8. Plaintiff further agrees that he waives and relinquishes any right or claim arising out of the conduct of any defendant in this case to date, including any of the organizations, individuals or entities as set forth in Paragraph 1 above, and the named defendants waive and relinquish any right or claim arising out of the conduct of Plaintiff to date.

9. This Mutual Release of All Claims and Settlement Agreement contains the entire agreement between the parties hereto, and the terms of this Agreement are contractual and not a mere recital. This Agreement may be amended only by a written instrument executed by Plaintiff and CSI. The parties hereto have carefully read and understand the contents of this Mutual Release of All Claims and Settlement Agreement and sign the same of their own free will, and it is the intention of the parties to be legally bound hereby. No other prior or contemporaneous agreements, oral or written, respecting such matters, which are not specifically

incorporated herein shall be deemed to in any way exist or bind any of the parties hereto.

10. Plaintiff agrees that he will not assist or advise anyone, including individuals, partnerships, associations, corporations, or governmental agencies contemplating any claim or engaged in litigation or involved in or contemplating any activity adverse to the interests of any entity or class of persons listed above in Paragraph 1 of this Agreement.

11. The parties to this Agreement acknowledge the following:

A. That all parties enter into this Agreement freely, voluntarily, knowingly and willingly, without any threats, intimidation or pressure of any kind whatsoever and voluntarily execute this Agreement of their own free will;

B. That all parties have conducted sufficient deliberation and investigation, either personally or through other sources of their own choosing, and have obtained advice of counsel regarding the terms and conditions set forth herein, so that they may intelligently exercise their own judgment in deciding whether or not to execute this Agreement; and

C. That all parties have carefully read this Agreement and understand the contents thereof and that each reference in this Agreement to any party includes successors, assigns, principals, agents and employees thereof.

12. Each party shall bear its respective costs with respect to the negotiation and drafting of this Agreement and

all acts required by the terms hereof to be undertaken and performed by that party.

13. To the extent that this Agreement inures to the benefit of persons or entities not signatories hereto, this Agreement is hereby declared to be made for their respective benefits and uses.

14. The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

15. This Agreement shall not be construed against the party preparing it, but shall be construed as if both parties prepared this Agreement. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

16. In the event any provision hereof be unenforceable, such provision shall not affect the enforceability of any other provision hereof.

17. All references to the plural shall include the singular and all references to the singular shall include the plural. All references to gender shall include both the masculine and feminine.

18.(A) Each party warrants that they have received independent legal advice from their attorneys with respect to the advisability of making the settlement provided for herein and in executing this Agreement.

(B) The parties hereto (including any officer, agent, employee, representative or attorney of or for any party) acknowledge that they have not made any statement, representation or promise to the other party regarding any fact material to this Agreement except as expressly set forth herein. Furthermore, except as expressly stated in this Agreement, the parties in executing this Agreement do not rely upon any statement, representation or promise by the other party (or of any officer, agent, employee, representative or attorney for the other party).

(C) The persons signing this Agreement have the full right and authority to enter into this Agreement on behalf of the parties for whom they are signing.

(D) The parties hereto and their respective attorneys each agree not to disclose the contents of this executed Agreement. Nothing herein shall be construed to prevent any party hereto or his respective attorney from stating that this civil action has been settled in its entirety.

(E) The parties further agree to forbear and refrain from doing any act or exercising any right, whether existing now or in the future, which act or exercise is inconsistent with this Agreement.

19. Plaintiff has been fully advised by his counsel as to the contents of this document and each provision hereof. Plaintiff hereby authorizes and directs his counsel to dismiss with prejudice his claims now pending in the action entitled Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153.

20. Notwithstanding the dismissal of the lawsuit pursuant to Paragraph 4 of this Agreement, the parties hereto agree that the Los Angeles Superior Court shall retain

jurisdiction to enforce the terms of this Agreement. This Agreement may be enforced by any legal or equitable remedy, including but not limited to injunctive relief or declaratory judgment where appropriate. In the event any party to this Agreement institutes any action to preserve, to protect or to enforce any right or benefit created hereunder, the prevailing party in any such action shall be entitled to the costs of suit and reasonable attorney's fees.

21. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, on the date opposite their names.

Dated: December 6, 1986

GERALD ARMSTRONG

Witness

Witness

Dated: 12/6/86

APPROVED AS TO FORM AND CONTENT:

M. J. Flynn
MICHAEL J. FLYNN
Attorney for
GERALD ARMSTRONG

Dated: December 11, 1986

Heber C. Jentzsch for
CHURCH OF SCIENTOLOGY
INTERNATIONAL

APPENDIX A

1. As used herein, the term "document" or "documents" include but are not limited to all originals, file copies and copies not identical to the original, no matter how prepared, of all writings, papers, notes, records, books and other tangible things including, by way of example and not of limitation, the following:

a. Memoranda, notes, calendars, appointment books, shorthand or stenographer's notebooks, correspondence, letters and telegrams, whether received, sent, filed or maintained internally;

b. Drafts and notes, whether typed, penciled or otherwise, whether or not used;

c. Minutes, reports and summaries of meetings;

d. Contracts, agreements, understandings, commitments, proposals and other business dealings;

e. Recordings, transcriptions and memoranda or notes made of any telephone or face-to-face oral conversations between or among persons;

f. Dictated tapes or other sound recordings;

g. Computer printouts or reports and the applicable program or programs therefor;

h. Tapes, cards or any other means by which data are stored or preserved electrically, electronically, magnetically or mechanically, and the applicable program or program therefor (from which plaintiff may reproduce or cause to be reproduced such data in written form);

i. Pictures, drawings, photographs, charts or other graphic representations;

j. Checks, bills, notes, receipts, or other evidence of payment;

k. Ledgers, journals, financial statements, accounting records, operating statements, balance sheets and statements of account.

1984

WHERE: Marin Superior Court, San Rafael Civic Center -
Scientology vs. Armstrong No. 152229

March 20, 1992 at 9:00 a.m., Department 4.

* * * * * *

Can the Scientology Organization purchase the free speech rights of Gerald Armstrong - the former in-house biography researcher/archivist of cult leader L. Ron Hubbard - so that it can keep the facts that he knows out of public view in the marketplace of ideas?

A former high-ranking Scientologist for 12 years, Armstrong split with the group when it insisted he continue lying about the accomplishments Hubbard claimed to the public at large. In 1982, the organization sued Armstrong for sending Hubbard documents to his lawyers. In 1984 at Armstrong's trial, Los Angeles Superior Court judge Paul G. Breckenridge, Jr., who ruled that Armstrong's actions had been manifestly justified, also found:

> "In addition to violating and abusing its own members civil rights, the organization over the years with its "Fair Game" doctrine has harassed and abused those persons not in the Church whom it perceives as enemies. The organization is clearly schizophrenic and paranoid, and this bizarre combination seems to be a reflection of its founder LRH [L. Ron Hubbard]. The evidence portrays a man who has been virtually a pathological liar when it comes to his history, background, and achievements. The writings and documents in evidence additionally reflect his egoism, greed, avarice, lust for power, and vindictiveness and aggressiveness against persons perceived by him to be disloyal or hostile."

For years, Scientology has treated Armstrong as a "suppressive person" who was "Fair Game." This policy says as Fair Game one

> "may be deprived of property or injured by any means by any Scientologist without any discipline of the Scientologist. May be tricked, sued or lied to or destroyed."

Defended by Ford Greene - the lawyer who persuaded the California Supreme Court that the Unification Church (Moonies) should be liable for brainwashing and who won an acquittal for a felonious-charged deprogrammer on the ground that the kidnapping was necessary to avoid cult-danger - Armstrong is resisting Scientology's high-powered attack in an effort to affirm his right to free speech to maintain vigilance for the truth.

After Armstrong beat Scientology's lawsuit against him in 1984, he was poised to prosecute his own claims. For millions of dollars, however, in 1986 Scientology settled with him and over 17 other Scientology-knowledgeable individuals on the condition that those persons would forever keep silent, avoid giving sworn testimony by evading subpoenas, and never aid or assist any one adverse to Scientology.

Between its full-page daily ads in U.S.A. Today and purchasing the silence of judicially-credible adversaries, Scientology's strategy is to eliminate the competition in the marketplace of ideas for those who would swallow the claims of its widespread advertisements for the benefits of Dianetics: The Science of Metal Health.

Scientology has demanded that newly-elevated Marin County Superior Court Judge Michael Dufficy give them a preliminary injunction which would prevent Armstrong from speaking out and assisting other individuals locked in litigation with Scientology - while at the same time fabricating false scenarios in other court proceedings that Armstrong was an agent of the IRS out to destroy it. If Scientology has its way, Armstrong would either roll over, or if he exposed its lies about him, Scientology would demand he be jailed for contempt of court.

When Scientology first came to Marin County to go after Armstrong, it asked the Court to conduct all proceedings in secret in closed proceedings. The Court refused. Then Scientology asked the Court to seal the settlement agreement that Scientology wants the Court to enforce. The Court refused. Now, Scientology has obtained a temporary restraining order compelling Armstrong not to speak out on the subject of Scientology. Scientology would like to make it permanent and will attempt to do just that at the March 20th Marin Superior Court hearing.

FOR FURTHER INFORMATION CALL:

KIRK SEIDEL, Press Liaison
(415) 457-5711

FORD GREENE (415) 258-0360

HEADLINE NEWS 1986

[SHOT: Studio setting]

NARRATOR: A former member of the Church of Scientology claims he has damaging information about the organization, but he's being silenced by a Court Order. Don Nab explains.

[CNN CAPTION: SCIENTOLOGY.]

[SHOT: Close up of Armstrong with Ford Greene behind him. Then a pan of the courtroom, with attorney Andy Wilson arguing and a shot of the Judge.]

Don Nab: Gerald Armstrong says he knows a lot about the Church of Scientology and he's fighting in court for the chance to tell it. A former archivist of the organization he had first hand access to records of Scientology's controversial founder, L. Ron Hubbard.

[SHOT: Close up of Armstrong in an office. Don Nab narrating]

Gerald Armstrong: I'm an expert in the misrepresentations Hubbard has made about himself from the beginning of Dianetics until the day he died.

Don Nab: But that's about all that he can say.legally. The Church of Scientology slapped Armstrong with a Court Order to prevent him from talking about what he may know.

[SHOT: Excerpt of Video tape of 1986 settlement signing.]

Heller: You are going to sign this of your own free will.

Armstrong: Yes.

[CNN caption: December 1986.]

Heller: OK. You're not suffering from any duress or coersion which is compelling you to sign this document.

[CNN CAPTION: Video provided by Anti-Scientology Attorney.]

Armstrong: No.

eller: Alright, ...

Don Nab: As part of the lawsuit settlement documented by Scientology on this video tape, the Church paid Armstrong $800,000. In that settlement Armstrong agreed not talk about the Church, it's documents, or its founder.

[1ST SHOT: Wilson and Hertzberg sitting at counsel table.]
[2ND SHOT: Greene arguing at counsel table.]

Don Nab: Now, the Church of Scientology wants to block Armstrong from working with anti-Scientology attorney, Ford Greene.

Ford Greene: Gerald Armstrong possesses information about the Church of Scientology on first-hand basis that undercuts a lot of the claims that they make to the public on a daily basis in advertisements on TV and advertisements in newspapers.

[CNN CAPTION: Ford Greene, Anti-Scientology Attorney.]

HOT: Bartilson at counsel table with a stack of papers.]

Don Nab: Greene hired Armstrong as a paralegal, to help him with a lawsuit against Scientology in Los Angeles.

[SHOT: Wilson arguing at counsel table.]

Don Nab: Attorneys for the Church of Scientology claimed that Armstrong was breaking his settlement contract.

Andy Wilson: $800,000. $800,000 was paid to that man. And now that he's spent the money, he comes into this court and he says, "I don't have to keep my part of the bargain."

[CNN CAPTION: Andrew Wilson, Scientology Attorney.]

[SHOT: Judge Dufficy at Bench.]

Don Nab: Scientology won this round. The gag on Armstrong remains, for now.

1988

[SHOT: Close up of Armstrong at counsel table.]

Don Nab: Armstrong is not alone. 12 former Scientology members have accepted money to settle lawsuits with the Church.

[SHOT: Pleading packs on counsel table.]

Don Nab: The settlements included, promises to remain quiet and take no part in further litigation against the Church.

[SHOT: Greene in law office.]

Ford Greene: It'll be extremely damaging because Scientology has spent a whole ton of dough, on keeping not only Gerry silent but a lot of other people silent. And if Gerry's case unravels, it's the first domino, and all the rest of them are going to unravel ...

[SHOT: Green in law office with interviewer.]

Don Nab: Attorney Greene says, Armstrong's knowledge of Scientology n prove the Church is not what it says it is.

[SHOT: Outside of the Courtroom. Armstrong and Phippeny prominent.]

Don Nab: Scientology says, Armstrong accepted a lot of money not to discuss the Church and should keep his word. Don Nab, CNN, San Raphael, California.